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- Frankenstein Television
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- James Madison: The Constitutional War President

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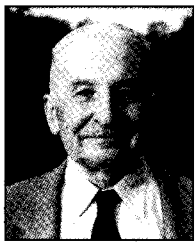

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PERSPECTIVE

Postconstitutional America?

It's a cliché that in time of war we must shift the balance between liberty and security, sacrificing some freedom to protect our society from assault. Funny how we blithely forget other fond adages when they become unfashionable, such as Benjamin Franklin's famous warning about trading freedom for security.

It is more important than ever that we get our pronouns right. Advocates of deficit spending used to parry the concerns of balanced-budget champions by saying that "we owe it to ourselves." This was obviously untrue. I certainly did not borrow from myself. Nor, I suspect, did you. There was no "we-ness" about it, but a whole lot of "they-ness."

There is something analogous in the current discussion of the balance between liberty and security, which has been moved manifestly toward the side falsely labeled "security" with the USA Patriot Act, the Homeland Security Department, and the Pentagon's ominous Information Awareness Office (IAO). "We" won't be giving up liberty for security. Rather, a small subset of "we"—namely, "they"—will take our liberty without our informed consent, albeit with the promise that we'll be safer in the process. The age-old question, of course, is: who will protect us from our protectors?

Before someone objects that "they" were elected by us, realize that our "representatives" were under such pressure to pass the Patriot Act and the homeland security legislation that they were not given time to read the voluminous bills. Thus it was only lately revealed that the homeland security bill, which was said to be merely an efficient reorganization of government agencies, actually expands the power of the federal government to intrude on our privacy.

That intrusion will come largely at the hands of the IAO. Its director, John Poindexter, has made the modest proposal that his office be given access to records of our electronic activities so that the agency can compile a huge database and look for patterns

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suggesting terrorist intent. The official seal of the IAO is the eye in the pyramid (see the back of the one-dollar bill) peering out over the globe. The Poindexter program sports the Orwellian name "Total Information Awareness System" and the motto "Knowledge Is Power"—a benign slogan, until you remind yourself whom the agency wants to acquire knowledge about and thus power over.

As news of the program spilled out, official spokesmen tried to reassure us with words like "safeguards" and "oversight." That's what they always say.

This is about the time that we should remind ourselves that, as Thomas Jefferson said in 1798, after passage of the Alien and Sedition Acts: "free government is founded in jealousy, and not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power."

* * *

California homeschool families heard from their state government recently. It seems they've all been breaking the law by not sending their children to school. Steven Greenhut explains.

With all the jabber about national identification and identity theft, Garry Wang thought it would be useful to review the history of the device that is most responsible for the threat to everyone's privacy: the Social Security number.

If you want to know why the state of economic knowledge is so poor, there might be no better place to look for an answer than the definitions of economics posted on university websites. Arthur Foulkes conducts the educational tour.

Consumer choice is an inconvenience for some people. But the different ways that capitalism and communism handle efforts to quash it speaks volumes, as Richard Coffman and R. Ashley Lyman explain.

The federal government administers a disability-payments program that bears a passing resemblance to real disability insurance. But the similarities are superficial, according to Robert Wright.

In our overcautious age, the conventional wisdom says children should wear helmets when bicycling. Ted Roberts wishes to dissent.

A time-honored American principle holds that the military may not be involved in domestic law-enforcement. As Gene Healy shows, that principle is now under assault.

The same government that brought you water-saving toilets wants to design your high-definition television. Michael Heberling says stay tuned for a flop.

The recent business scandals have cast a shadow over accounting. Chris Edwards finds a review of the history of the profession worthwhile.

When big-government advocates say tax cuts aren't needed, they clearly aren't thinking about how marginal tax rates discourage effort. But Daniel Klein and Allan Raish *are* thinking about it.

Some highly successful entrepreneurs didn't find success until middle age or later. Larry Schweikart believes it's good they kept trying.

Here's what our columnists have been hard at work on. Lawrence Reed discusses some research that union leaders would rather not hear about. Doug Bandow laments the dark side of the world. Burton Folsom looks at a wartime president who actually remembered the Constitution. Donald Boudreaux finds virtue in self-interest. Charles Baird has the scoop on the west coast dock strike. And James Bovard, hearing it said that new anti-gun laws will protect against snipers, rejoins, "It Just Ain't So!"

In the book department, our reviewers take on volumes about the fairness of the marketplace, property and technology, government's shortcomings, Adam Smith, the damage done by bad philosophy, and the decline of Western culture.

—Sheldon Richman

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New Laws Will Protect Americans from Snipers?

It Just Ain't So!

The handcuffs had barely been slapped on the two Maryland sniper suspects—John Allen Muhammad and John Lee Malvo—before the so-called liberals began invoking their crimes as a pretext to undermine the rights of all Americans. *New York Times* columnist Bob Herbert, writing on October 31, 2002, invoked federal crime statistics indicating that "the number of people murdered in the U.S.—exclusive of the Sept. 11 attacks—was a staggering 15,980. There were no screaming headlines to accompany this disclosure because more than 15,000 people are murdered in the U.S. every year, most of them by firearms."

Herbert called for new restrictions on firearms sales in order to protect Americans from future attacks. But is there any reason to believe that new gun-restriction laws would provide any better protection to Americans than previous laws?

Herbert urged ballistics testing of all new guns sold. Ballistics testing as a crime cure has about as much reliability as the baldness cures sold at an old-time circus sideshow. Maryland imposed a new ballistics-test requirement for all guns sold after October 1, 2001. The mandate wreaked havoc on Maryland gun buyers and sellers. Despite this, Maryland prosecutors have yet to use any of the results in court. The test data for new guns are not of much value after the guns have been fired a few hundred times. And revolvers do not leave shell casings—thus making the new mandate almost completely pointless.

Herbert also lays into the "gun show loophole" as a major source of carnage in America. In recent years the gun-control lobby has used that term to define political battles in a way that creates a growing bias against the right to keep and bear arms. The "gun show loophole" is a fraud: federal firearms licensees who sell guns at gun shows must comply with the same federal requirements as for any other gun sale. A small number of citizens without licenses sell guns at gun shows in some states—but the same people can and do sell guns from their kitchen tables and garages. A Justice Department 2001 study estimated that only 1 percent of the guns used in crimes were acquired at gun shows. Yet prohibitionists seized on the imagery of gun shows to try to take a giant leap toward national gun registration.

Herbert invoked a 1999 report by the Violence Policy Center (VPC) denouncing the gun industry's efforts "to market sniper rifles and the resulting subculture of sniper enthusiasts that have turned discussion of this weapon into a cottage industry of books, Web sites, computer games and even sniper schools." But John Muhammad had spent years in the U.S. Army—had served in the Gulf War—and was trained by the U.S. government as an "expert marksman."

Besides, relying on the VPC for dicta on firearms issue is like relying on the Ku Klux Klan for information on race relations. A November 2001 VPC report titled "Unintended Consequences: Pro-Handgun Experts Prove that Handguns Are a Dangerous Choice for Self-Defense" purported to prove that guns are unsafe in almost any private hands. VPC warned that "there is no way to both safely store a handgun and yet keep it ready for instant use to defend oneself." VPC asserted that the only alternative to storing a gun is to keep it with you at all times—and then sneered that "strapping on your shooting iron is impractical (not to mention embarrassingly foolish) for most people." Strapping on a firearm may be "embarrassingly foolish" to "liberal" yup-

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pies whose biggest daily risk is whether Starbucks will have a freshly brewed pot of their favorite flavor. But for the many millions of Americans who live in urban-hell neighborhoods or remote rural areas where law enforcement cannot promptly respond, there is no blushing about taking responsibility for preserving one's own life.

The titles of VPC press releases over the years vivify the *jihad*-nature of the center's work. On March 5, 2001, after a 15-year-old student killed two classmates and wounded many others in the boys' bathroom, VPC issued a release titled "Santana High School Shooting Latest Proof of Need for Handgun Ban." On February 7, 2001, after a former IRS auditor brandished and fired a gun near the White House and was shot by Secret Service agents, VPC issued a release titled "White House Shooting Latest Proof of Need for Handgun Ban." On April 25, 2000, after a gang-banger wounded bystanders in an inept attempt to shoot his enemies, VPC issued a release: "Shooting at National Zoo Latest Proof of Need for Handgun Ban." VPC Executive Director Josh Sugarman wrote a book called *Every Handgun Is Aimed at You: The Case for Banning Handguns*.

Dependent on Government

The more successful gun control is in disarming citizens, the more dependent people become on government officials for protection. Columnist Herbert denounces "the terrible toll that guns in the wrong hands are taking." It is ironic that Herbert would hit this theme to justify new restrictions on private gun ownership. Herbert has done some of the best writing in America on police misconduct—on wrongful police killings of innocent Americans—and on police department cover-ups of their carnage. Further restricting private gun ownership would not make police more trustworthy or less trigger-happy.

Gun bans don't ban guns; rather, they ban citizens from legally defending themselves with guns, which at present they do some two and a half million times a year. The more difficult government makes it for law-abiding citizens to get guns, the more power armed criminals will have. Gun bans destroy the possibility of a balance of firepower between law-abiding citizens and violent criminals.

Politicians perennially react to the police's total failure to control crime by trying to disarm law-abiding citizens. The more government fails to control crime, the less able each individual citizen is to defend himself.

Banning guns in response to high crime rates is like closing the barn door after the horse has escaped. For the average citizen walking down a dark street late at night, a promise from a politician is worth far less than a .38 Special.

—James Bovard
(jbovard@his.com)
Author, *Lost Rights: The Destruction of American Liberty*

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FEBRUARY 2003

California's War on Homeschoolers

by Steven Greenhut

I'm routinely astounded by the degree to which Americans will be outraged by government abuses that take place in far-off lands, while remaining uninterested in similar abuses right here in their very midst.

My newspaper, the *Orange County Register,* last October featured a series on an issue that has sparked an "international outcry." It is a serious and outrageous issue—the plight of millions of underground Christians, described in the series as "one of the fastest-growing groups in China, regarded by the government as a threat to control and stability."

The articles tell harrowing tales of average Chinese people risking jail sentences for the "crime" of "running illegal Bibles, tracts and recordings to safe houses and underground churches." These Christians aren't directly challenging the government's authority, but their mere presence worshipping together in house churches is enough to spark a heavy-handed official backlash.

While this story is playing out, another one has received little coverage in the California media. Last October 10 the *Los Angeles Times* printed a story on the front cover of an inside section, which was blandly titled "State Puts Parents on Notice."

On notice for what?

On notice that state bureaucrats insist that homeschooling one's children is a crime, and that those who keep on doing it should face jail time and perhaps have their children taken away from their families by Children's Protective Services.

The law doesn't appear to be on the bureaucrats' side, and state officials don't have the authority or resources to put homeschool parents in jail, as much as they would like to do so. But one would think it would merit more attention when the top education officials in the state have announced plans to crack down on what should strike most of us as a basic freedom—the right to educate one's own children as one pleases.

Not to put too fine a point on it, but the thought of underground Christians meeting secretly in homes to worship under threat of arrest isn't all that different from the thought of underground homeschool parents teaching their kids secretly at home under the threat of being arrested and losing their children.

Yet where are the outraged people, aside from those who are homeschooling their children, and where are the demands from the legislature and Congress for action?

They are nowhere to be found, given that few Californians, or Americans from any place, question the authority of the state to decide where our children are educated and under what circumstances. Even conservatives who defend homeschooling rarely question the compulsory-attendance laws that make this bullying possible.

Steven Greenhut (sgreenhut@ocregister.com) is a senior editorial writer and columnist at the Orange County Register *in Santa Ana, California.*

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There are no new legislative or court-imposed restrictions on homeschooling in California. What has changed is the willingness of the state Department of Education (DOE), under the leadership of a left-wing ideologue, to use whatever opportunities present themselves to harass, intimidate, and frighten parents into sending kids to public schools or to private schools that have been approved by the state.

The state education code does not expressly allow or restrict homeschooling. In fact, it doesn't mention it directly at all. But California Education Code Section 48222 explains: "Children who are being instructed in a private full-time day school by persons capable of teaching shall be exempted" from compulsory education laws. (Note the words "capable of teaching," rather than "having a teacher certification.")

So California parents have done what homeschoolers do in 11 other states that don't expressly recognize homeschooling. They simply have registered themselves as private schools, albeit ones with one or two teachers and students. For years, these parents have dutifully filed private-school affidavits with their local county departments of education, and rarely if ever did anyone bother them.

Despite the lack of a state law directly approving homeschooling, other aspects of the state education code make it clear that the legislature approves of parents' operating home schools as private schools.

"'Private school' is not defined anywhere in the statutes, nor are private schools limited or described in terms of number of students, location, size of facilities, or relationship of students to teachers," wrote Michael Smith, president of the Home School Legal Defense Association, in a recent letter to the California legislature.

Implicit Recognition

Furthermore, Smith wrote, a subsection of the education code carves out certain exemptions for private schools from a law requiring teachers to submit fingerprints to the Department of Justice. Exemptions include "a parent or legal guardian working exclusively with his or her children."

Only someone with an ideological axe to grind could find illegality in the practice of homeschooling.

Unfortunately, since the early 1990s, the DOE has been grinding away. The axe has gotten sharper in recent years, now that Democrats have an iron-clad grip on both houses of the legislature and control nearly every statewide office. In recent months, the department has more vocally declared its long-standing policy that homeschooling is illegal, unless the parent holds a state teaching certification or the homeschool comes under the control of a local school district.

In fairness, the DOE has limited authority, and locally district attorneys generally lack the desire or the resources to go after law-abiding citizens who are homeschooling their children. But in some places in California, such as Berkeley, authorities have tried to crack down on homeschooling, although they ultimately have been unsuccessful.

The DOE might not really think that it will succeed at cracking down on home schools, but some critics believe the intent is harassment—to scare some parents away from choosing to homeschool their children.

That's the likeliest scenario.

The current controversy was caused by a seemingly small change in an administrative procedure. With the support of some major private schools, the DOE last year changed how private schools file their paperwork, making them file directly with the state online rather than through local county departments of education. Ostensibly, the change would make the papers easier to file.

"The major problem that could develop over the next couple of years is in follow up by the counties or local school districts after the affidavits have been filed with the state," wrote the Home School Legal Defense Association in a message to its members. "Counties and school districts will increasingly be encouraged by the State Department of Education to go beyond their legal authority to simply verify the filing of the affidavit during the investigation of an allegation of truancy."

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Well, yes. Anytime a state agency, especially one that has declared homeschooling illegal, wants to centralize the paperwork process for certifying private schools, then there's definitely a problem brewing.

The matter garnered public attention after then-Superintendent of Public Instruction Delaine Eastin sent a letter to district and county school officials explaining the new private-school filing procedures. It included this legal-sounding explanation of homeschooling: "As generally understood, the term home schooling describes a situation in which non-credentialed parents (that is parents who lack a valid California teaching certificate) teach their own children, exclusively, at home, often using a correspondence course or other types of courses. Defined in this way, home schooling is not authorized in California, and children receiving home schooling of this kind are in violation of the state's truancy laws."

Parents panicked. The situation became publicized on WorldNetDaily, and the e-mails began flying. But rather than back away, or soften her stance, Eastin became more defiant. She penned a letter to the *Register,* which had published articles criticizing her view, reiterating the department's position: "The classic 'home school'—where children are taught by their parent who does not have a teaching credential—is not a legal means of complying with compulsory education law, which means that homeschooled children are truant."

The Forbidden and the Allowed

In totalitarian countries, anything not expressly allowed is forbidden.

In America, the reverse is supposed to be true. Unless something is specifically forbidden (specifically, behaviors that violate other people's rights), it is supposed to be allowed.

Yet because California law does not expressly say "home schooling is legal," the education establishment insists that it really is a banned activity.

What country do we live in? North Korea?

The ensuing brouhaha gave Eastin the pretext she had been looking for to push the legislature to restrict homeschooling. She wrote a letter to the legislature blaming aggressive homeschool organizations for creating a furor and for encouraging parents to illegally designate their homes as private schools.

"Over the last few weeks, the Department of Education has been characterized in some circles as being engaged in a campaign to harass homeschoolers and to root out homeschooling in California," she wrote to legislators. "None of these charges is true, of course, but the amount of misinformation, and passion, in these communications does make me believe that the situation cries out for a legislative solution."

That legislative "solution" was not spelled out, but it's not hard to understand what she wants. In the letter Eastin complained that "Home schools are not even subject to competition from private schools, where the marketplace would presumably ensure some level of quality and innovation."

That is utterly galling. The state's top advocate for educational socialism is lecturing the legislature on the need for market reforms to ensure that home schools function properly. It's as if Fidel Castro lectured the Cayman Islands on the need for market competition in the banking industry.

Fortunately, even the Democrats who control things didn't want to touch this one in an election year. Although homeschoolers would benefit from a real legislative solution—a law that explicitly made homeschooling legal—they don't want to open this issue in the left-wing legislature. They know they are likely to get something much worse. The law allows homeschooling, they argue, so let sleeping dogs lie.

Superintendent Eastin was term-limited out and replaced by Jack O'Connell, a former state senator with a similar ideology. That leaves Californians with the current, tenuous home-school situation. Yes, California law is on the side of homeschoolers, and the courts have eventually rejected efforts by a few zealous DAs to prosecute homeschoolers as truants.

Still, the situation is unsettling, given the ideological situation in the DOE. At any

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time, a vindictive or nosy neighbor can turn homeschool parents in, just as it's done in Cuba, and Children's Protective Services (CPS), the police, or other authorities, under the auspices of the DOE directive, could be snooping. Parents probably will win any court battle in the end, but how many parents want to endure that grief?

Understaffed Agencies

The *Times* article makes a couple of points that conservatives in particular ought to consider:

First, the only thing standing between homeschoolers and a truancy charge in some areas is that many school districts and law-enforcement agencies perceive themselves as underfunded, understaffed, and overburdened. Consider that the next time some pro-law-and-order politician wants to put more cops on the street or fund a bigger CPS budget. What will those extra officers or social workers do with their time? They'll look for new targets of course, and homeschoolers could be on the list.

Second, some of the new attention on homeschoolers in California is at least partly the result of new guidelines coming from the federal government, under the Bush administration's repugnant "No Child Left Behind Act." This federal legislation pushes state school officials to get higher numbers of teachers credentialed, and homeschool teachers may be an easy target.

Ironically, while school officials complain that parents shouldn't teach their own children if they aren't credentialed, about 40,000 of California's 300,000 public-school teachers lack credentials. I don't see Eastin wanting to shut those schools down.

"A credential doesn't mean someone teaches well," said Lance Izumi, an education policy expert for the free-market Pacific Research Institute in Sacramento. The principals he works with prefer teachers without credentials, because they are not brainwashed by the statist propaganda that is the foundation of a modern ed-school degree.

In California, even education officials admit that homeschoolers are not truant in the normal sense of the word. If there are cases of parents pretending to homeschool their kids, but really not teaching them at all, I'd love to hear about them. They simply don't exist.

In reality, an estimated 100,000 California students have parents wise enough to try to save them from the indoctrination centers known as public schools. That's what sticks in the craw of school totalitarians such as Eastin.

California public schools have test scores toward the bottom of the nationwide heap, explains Izumi, and more than half of students cannot pass high-school exit exams, which is sparking efforts continually to dumb down those tests. Meanwhile, everyone sees the success of homeschoolers at top universities and even spelling bees.

It's an embarrassment, given that public schools in California spend more than $9,000 a year to educate a single pupil, while parents spend a tiny portion of that amount.

"Eastin doesn't have any hard evidence that home-schooling is linked to low student achievement," Izumi added. "In fact she doesn't want any tests. She knows there will be a positive link between home-schooling and achievement. It's just a control issue for her. And it's a question of money. She wants her ADA (average daily attendance) dollars."

Of course, California educators should just leave homeschoolers alone. But just like the Chinese officials, who are more interested in cracking down on home churches than tending to their problems, California educators have adopted a totalitarian mindset that cannot tolerate one flower blooming on a barren landscape.

Nothing will change until more Californians spend a little more time getting outraged at what's going on here, and let the Chinese worry about their own country. □

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FEBRUARY 2003

Your Social Insecurity Number

by Garry Wang

Some advocates of a national ID card profess to be concerned about the personal security of individuals. They lament the ease with which current ID requirements may be sidestepped by those who would violate an individual's privacy in order to perpetrate such crimes as credit-card fraud or identity theft. While this is a legitimate concern, the paradox is that in the name of protecting individual privacy, the establishment of a national ID card would likely make it harder than ever for Americans to protect their private lives from prying eyes.

Too often advocates of a national ID card don't ask why the current identification requirements exist in the first place, and what it is about these requirements that has rendered the individual so vulnerable to violations of privacy. Yet the actual history of the Social Security number (SSN) in the United States shows how the mandatory uses of a government-mandated identifier—even one originally intended only to organize the bookkeeping of a single government program—can extend far beyond originally stated intentions.

The Social Security Act was passed in 1935 as a Depression-era measure to provide economic "security" for the aged. It did not mandate a specific means by which taxpayers and their income would be tracked. But it did authorize Social Security taxes to be "collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title . . . as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury."[1]

In the beginning, only participants in the program were obliged to obtain an SSN (and at that time, not all Americans were required to participate). The only transactions tagged with the number pertained to money that was actually being "paid into" the program, which would presumably have some relationship to how much could later be "taken out" in monthly payments on retirement (as if there were some kind of secure depository, or "lock box," in which the funds would accrue until the depositor could collect them, a view of the situation that few Americans any longer believe).

Over the years, however, the mandatory use of the SSN proliferated on two overlapping tracks. More and more people were required to obtain one, whether or not they participated in the program; and more and more transactions had to be tagged with the SSNs of the transactors—even when the transactions had nothing to do with Social Security accounting.

Concerns about abuse of the number existed from the beginning. For many years, the Social Security card bore a printed warning (never codified in law, however) that the card was "not for identification." But

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despite sporadic admonitions from the government itself that the SSN was not to be fashioned into a universal identifier, its purview expanded almost without limit. Eventually it would be used to track not only government employment, payments, and functions, but for an ever-growing range of private matters as well.

In 1936 the Treasury prescribed that each individual in the Social Security program be assigned an account number, what came to be known as the Social Security number. Between November 1936 and June 1937, Americans submitted some 30 million applications for SSNs.

By 1943, the government was already using the SSN as an identifier for purposes other than Social Security record-keeping. Under executive order 9397, not only were all agencies of the federal government authorized to use the SSN for their own accounting, they were also *required* to do so should any kind of identification protocol be needed. The order declared that "it is desirable in the interest of economy and orderly administration that the Federal Government move towards the use of a single unduplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems," and it cited the "convenience" of using the already widespread Social Security number.[2]

Use Expands

In 1961, the Civil Service Commission adopted the SSN as an identifier for all federal employees. In the same year, the Internal Revenue Service (IRS) required taxpayers to furnish an identifying number for tax reporting. A year later the IRS issued a regulation mandating that this identifying number, for individual taxpayers, be the Social Security number. A decade after that, the IRS regulation was codified in law. In 1966, the Veterans Administration began using the SSN for its record-keeping. In 1967, the government began using the SSN to identify members of the armed services.

In 1972, the Social Security Administration was required to issue SSNs to all legal aliens as they entered the country. In the same year the Administration was authorized to distribute SSNs to children as they started school. In 1981, the Department of Defense Authorization Act required SSNs from all individuals registering for the selective service. The Food and Agricultural Resources Act of 1990 mandated that the "officers" of stores redeeming food stamps supply their SSNs.

Sometimes the government requires taxpayers and benefit recipients to divulge not only their own Social Security numbers, but also those of persons not even paying taxes or receiving benefits. The Tax Reform Act of 1986 determined that the SSNs of all dependents age 5 or over must be reported on an individual tax return if the taxpayer wants to take the usual deductions. A few years later, Congress reduced the age threshold from 5 to 2. These days, even newborns are expected to get SSNs before leaving the hospital.

By the 1960s the government had determined that it was necessary to use the SSN not only to identify the beneficiaries of programs, taxpayers, government employees, aliens, and schoolchildren, but also to identify various transactions that could possibly be subject to taxation. Of course, all of these transactions had been "identified" already, by financial institutions for the benefit of themselves and their customers. The new purpose had little to do with safeguarding the security and privacy of either (and in fact obviously invaded that privacy); the sole purpose was to enable a third party—government—to keep a record of what people were doing with their own money prior to any declaration of it as taxable income. And it is precisely this progressive linking of every financial transaction to a single "identifying" number that has rendered individuals so vulnerable to the fraud and theft that some advocates of national ID profess to be alarmed by.

The funds first targeted for SSN-tagging were those, like Social Security itself, that were controlled by government. In 1964, purchasers of H-series savings bonds were required to supply SSNs. In 1970, the Bank

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Although the Tax Reform Act of 1976 asserted that misuse of a Social Security number constituted a violation of the Social Security Act, that same legislation also gave states carte blanche to demand the SSN for the administration of taxes, public assistance, driver's licenses, and motor-vehicle registration.

Records and Foreign Transactions Act mandated that all banks, credit unions, and dealers in securities collect the SSNs of their customers, and that all transactions involving more than $10,000 be reported individually to the IRS along with the customer's SSN. In 1973, buyers of E-series savings bonds were also required to supply their SSNs. The Social Security Amendments of 1983 stipulated that nobody could open an interest-bearing account without giving his SSN.

The result of these almost yearly extensions of the purview of the Social Security number is that it is now nearly impossible to do anything with one's money without supplying that number, unless one simply holds cash.

Security Concerns

Social Security Board Regulation No. 1, June 15, 1937, provided that no Board employee may disclose anybody's SSN before "any tribunal, directly or indirectly," even under subpoena.[3] Yet many years later, in 1990, Congress found it necessary to put a provision in the Food and Agricultural Resources Act requiring that any SSNs acquired as a result of any law passed on October 1, 1990, or later remain confidential. Obviously, legislators regarded the 1990 law as necessary precisely because of how carelessly the SSN had been handled between 1937 and 1990. Regulation No. 1 governed only a single governmental entity, the Social Security Board. Subsequent laws and regulations, as well as growth in the market for personal information and technological developments, had rendered that injunction progressively irrelevant.

Every once in a while various government officials acknowledge the dangers to personal privacy and security that have been engendered by the government's own proliferating mandates with respect to the Social Security number.

In 1971, for example, the Social Security Administration proposed that the government take a "cautious and conservative" approach toward the SSN and do nothing to promote its deployment as a universal identifier. Yet the same report also proposed using the SSN to log students in the public schools. More expressions of concern followed, as well as halfhearted efforts to address these concerns. In 1973 the Department of Health, Education, and Welfare warned that the SSN was unsuitable as a universal identifier. The Privacy Act of 1974 stated that no state or local government may refuse a benefit solely because a person declines to provide his SSN. But a year later, the Social Services Amendments specified that applicants for Aid to Families with Dependent Children (AFDC) must provide SSNs as a condition of eligibility. The 1974 Act also sought to "protect personal information gathered by the federal government, but not information collected by private businesses like banks, credit-card companies, employers, and health-care providers."

But as privacy expert Robert Ellis Smith has pointed out, since 1974 "agencies at all levels of government have justified their demands for Social Security numbers by pointing to general authorizations in laws predating the Privacy Act that simply allow the agencies to conduct some function or to collect information to conduct their func-

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tions. That is not at all what members of Congress had in mind in the fall of 1974, but the practices are only occasionally challenged successfully."[4]

And although the Tax Reform Act of 1976 asserted that misuse of a Social Security number constituted a violation of the Social Security Act, that same legislation also gave states carte blanche to demand the SSN for the administration of taxes, public assistance, driver's licenses, and motor-vehicle registration. In 1977, the Carter administration proposed that the Social Security card be one of the authorizing documents provided to employers to confirm that an applicant is allowed to work in the United States, adding that the card ought not be used as a national-identity document.

Despite such weak, occasional, and contradictory legislative efforts to put the evil contents back in Pandora's box, today any American who does not take special care to protect his privacy is vulnerable to a little determined investigation. It has become ever easier to learn a person's Social Security number and to use that information in conjunction with other basic information about a person to delve even further into that person's financial background.

A law stipulating that a governmental or private entity may not divulge the Social Security number under certain broadly and vaguely defined circumstances becomes increasingly difficult to enforce as more and more organizations and persons gain legal justification to demand it. And once a person's SSN is "out there"—including on the upper-right-hand corner of credit-card reports that anyone who claims to have a legitimate purpose may easily obtain—it becomes increasingly difficult to preserve any expectation of confidentiality. If gaining access to or releasing a person's Social Security number is sometimes a crime, at least nominally, it more often is not. And even when it is nominally a crime, the crime may be impossible to prosecute.

Yet the SSN is regarded as evidence of identity! As Robert Ellis Smith notes, even as the Social Security number "was becoming more and more a public piece of information . . . people in places of authority were treating it as an authenticator of a person's identity, as if it were a secret known only to the individual."[5]

If anything is clear from the history of the Social Security number, it is that assurances about the scope and uses of any proposed national ID card are not to be trusted. Such political promises are as easy to break as they are to make—especially when it comes to making our personal data more easily available to data-ravenous public and private parties. If the trend inaugurated in the United States in the 1930s continues to accelerate, those of us who care about our privacy may soon have more reason than ever to be careful about what we tell and to whom. □

1. Text of the Social Security Act of 1935 is at the website of the Social Security Administration, www.ssa.gov/history/35act.html.

2. The order is archived online at the Law Links website at http://resource.lawlinks.com/content/legal_research/executive_orders/1940-1960/executive_order_9397.htm.

3. See www.ssa.gov/history/reg1.html.

4. Robert Ellis Smith, *A National ID Card: A License to Live* (Providence, R.I.: Privacy Journal, 2002), p. 9. The Social Security Administration's chronology of its assignments and pronouncements regarding the SSN and the privacy rights of citizens may be found at www.ssa.gov/history/ssn/ssnchron.html.

5. Robert Ellis Smith, *Social Security Numbers: Uses and Abuses* (Providence, R.I.: Privacy Journal, 2001), p. 6.

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Labor Freedom Makes Sense

If compulsory unionism were put to a moral test, it would flunk without debate. Forcing a worker to join and pay dues to an organization he doesn't want to represent him is a manifest violation of that worker's free will and right of contract. It so happens that it also fails the economic test, as two recent studies strongly demonstrate.

No less a figure than the American labor movement's founder, Samuel Gompers, favored freedom of choice in representation. He once told workers, "I want to urge devotion to the fundamental of human liberty—to the principles of *voluntarism*. No lasting gain has ever come from compulsion. . . . [T]he workers of America adhere to voluntary institutions in preference to compulsory systems which are held to be not only impractical, but a menace to their *rights*, their *welfare* and their *liberty*."

Furthermore, Gompers noted, "there may be here and there a worker who for certain reasons . . . does not join a union of labor. It is his legal right and no one can or dare question his exercise of that legal right."

Unfortunately, that right is no longer respected everywhere and is met by most organized labor leaders with scorn and evasion.

In a genuinely free labor market, government would be neutral in labor-management relations except for adjudicating disputes, enforcing contractual obligations, and punishing deception and violence against people and property. Individual workers would be free to negotiate directly with employers, or they could band together and offer their labor services as a group. Government would not bless one method of bargaining over another by bestowing powers of coercion on any parties in the marketplace.

In a recent study published jointly by the National Legal and Policy Center and the John M. Olin Institute for Employment Practice and Policy, Ohio University economists Richard Vedder and Lowell Gallaway demonstrated that compulsory unionism does economic damage that ultimately works to the disadvantage of workers, both unionized and non-unionized ("Do Unions Help the Economy? The Economic Effects of Labor Unions Revisited," October 2002, www.nlpc.org/olap/lrev/).

They calculate that unions have cost the U.S. economy $50 trillion over the past half-century. By distorting the price of labor and imposing inefficient work rules, Vedder and Gallaway argue, union policies constitute a steady drain on resources and overall productivity: "The deadweight economic losses are not one-shot impacts on the economy. What our simulations reveal is the powerful effect of the compounding over more than half a century of what appears at first to be small annual effects."

These economic losses mean that although unionized workers have 15 percent higher wages than non-unionized workers, overall wages are depressed by an economy that is 30–40 percent smaller than it would other-

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wise have been. In other words, unionized workers get a slightly larger piece of a pie made significantly smaller by their union efforts.

Vedder and Gallaway provide stunning data on what happened after unionization of key industries. For example: In 1960, after 40 years of John L. Lewis's militant leadership of the United Mine Workers (UMW), wages were indeed higher for those who still had jobs but there were 400,000 fewer people employed in the coal industry. By 1999, just 70,000 workers were left in coal mining—barely one-tenth the number when Lewis took control of the UMW 80 years before.

Vedder and Gallaway concede that unions make some people happy by improving their perception of their "quality of life," but they are quick to point out that recent migration patterns are more revealing. The 11 states with the lowest rates of unionization between 1990 and 1999 "had net in-migration of 3,530,108, which is more than one thousand persons a day, every day, for nine years." At the same time, the 11 states with the highest rates of unionization suffered a net loss of 2,984,007 people.

"Right to Work"

In the past seven decades, federal and state laws have undermined the principles of a free labor market. However, at least federal law allows states the option of adopting an alternative to full-blown compulsory unionism known as "right to work," under which workers cannot be compelled to join or pay dues to a labor organization as a condition of employment. Labor economist and fellow *IOL* columnist Charles Baird points out that the 22 right-to-work states still grant unions the exclusive power to represent all employees at a work site if only a simple majority so vote. But the *relative* labor market freedom in those states provides some interesting (and remarkably favorable) contrasts with the 28 less-free states where compulsory unionism enjoys far greater legal sanction.

That's the major finding of a Mackinac Center for Public Policy study by economist William Wilson, titled "The Effect of Right-to-Work Laws on Economic Development." Released in June 2002, it examined economic data from states with right-to-work laws and those without, including the state known as a bastion of unionism and birthplace of the United Auto Workers—Michigan. (See www.mackinac.org/4290.)

Between 1970 and 2000, Wilson found, right-to-work states created jobs nearly twice as fast as Michigan did. From 1977 through 1999 Michigan's gross domestic product grew at only around half the rate of right-to-work states. From 1978 through 2000 the unemployment rate in Michigan was, on average, 2.3 percent higher than in right-to-work states. While Michigan wages are nominally higher than those in right-to-work states, after correcting for differences in the cost of living, the typical family in a right-to-work state has $2,800 more in purchasing power per year. While poverty rates dropped dramatically nationwide over the past 30 years, Michigan was one of seven states, all non-right-to-work, that witnessed an increase in the percentage of residents living in poverty.

Manufacturing is one of the key segments of the economy that unions are supposed to be made for. But in the past 30 years, Wilson points out, right-to-work states *created* 1.43 million manufacturing jobs, while the other states *lost* 2.18 million manufacturing jobs.

The evidence in the Wilson study overwhelmingly corroborates that of the Vedder-Gallaway study. Together, the two documents send a powerful message: Compulsion is costly. Freedom in the labor market is a sound economic principle because it results in more wealth for everybody.

For those of us offended by coercion and inspired by liberty, it's always nice to know that what makes moral sense also makes economic sense. □

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University Economics versus Austrian Economics

by Arthur Foulkes

Some time ago my wife asked me to define economics for her.

"Ah," I said, sensing an opportunity to sound intelligent. There was long silence. I sat up, cleared my throat, and said "Ah" again.

Truth was I wasn't sure how to answer her. Of course, I could have spouted some answer with lots of "scarcities" and "resources" (after all, years of teaching college courses had taught me how to sound intelligent without being clear), but I wanted something better for my wife. To date, I still haven't attempted to answer her, but I have, as they say in mystery novels, made inquiries.

One source I queried was, naturally, the Internet. I did a Google search of university economics department Web pages to learn how they, the trainers and certifiers of today's economists, define their science. The results are a little disheartening.

Many of the economic departments I found defined economics as the study of how *societies* choose what to produce and then how to allocate what has been produced. If definitions mention individuals at all, it is usually in conjunction with society as a whole.

Perhaps a benchmark definition for this view of economics is one by the Nobel laureate and best-selling textbook author Paul A. Samuelson. It's quoted prominently by one economics department. Samuelson writes economics is "[T]he study of how men and *society* end up choosing, with or without the use of money, the employment of scarce productive resources, which could have alternative uses, to produce various commodities over time and distribute them for consumption, now and in the future, among various people and groups *in society*."[1]

This emphasis on "society" makes sense if you presuppose the existence of interventionism and see the economist as someone who can choose for society at large whether to produce guns or butter or a little of each. Since this presupposition almost certainly *does* exist in the minds of most academics, politicians, and citizens, it makes sense that economics departments would reflect this in their definitions of economics.

One department's definition nicely sums up this perspective: "Our main motivation [as economists] is to find mechanisms which encourage efficiency in the production and use of material goods and resources, while at the same time producing a pattern of income distribution which society finds acceptable."[2]

Another department put it this way: Economics is the study of "how society provides for its material well being. It concerns the production, distribution and use of goods and services. It studies the allocation of scarce resources among alternative uses."[3]

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In addition to (and perhaps as a result of) this highly collectivist view, many departments also take a highly inductive and quantitative view of economics. They present the economist as a sort of white-coated laboratory experimenter, tirelessly seeking "a socially efficient equilibrium" where, as one department explains, "no individual can be made better off without making others worse off."[4]

One department states: "Economists are scientists. We design experiments, test hypotheses, make predictions, etc. As such, a good economist requires the same sort of skills needed by a good chemist or physicist. . . . [E]conomists work in the laboratory of everyday human and organizational behavior."[5]

Another says: "Many economists use mathematical models to explain and predict economic behavior and econometric analysis to test these models against observed data from the real world."[6]

Ludwig von Mises (1881–1973)

Austrian Approach

Those two notions, that economics is about allocating *society's* resources and that it is largely an inductive and quantitative science, are both at odds with the Austrian school's approach to economics. First, Austrian economists do not focus on things (resources, goods, and services) but rather on human action. As perhaps the greatest Austrian economist, Ludwig von Mises, wrote, "Economics is not about things and tangible material objects; it is about men, their meanings and actions."[7]

Mises and other Austrians further emphasize that while human beings are certainly enmeshed deeply within society and "social entities," the focus of economics needs to remain squarely on the individual, not collectives. Mises wrote:

> A collective whole is a particular aspect of the actions of various individuals and as such a real thing determining the course of events.
>
> It is illusory to believe that it is possible to visualize collective wholes. They are never visible; their cognition is always the outcome of the understanding of the meaning which acting men attribute to their acts. We can see a crowd, i.e., a multitude of people. Whether this crowd is a mere gathering or a mass . . . or an organized body or another other kind of social entity is a question which can only be answered by understanding the meaning which they themselves attach to their presence.[8]

The view that economics is an inductive science is also misleading from the Austrian point of view. Austrians view economic science as principally deductive, based on fundamental laws of human action, which are as real as "the laws of nature" and represent a body of knowledge pertaining to a "regularity of phenomena to which man must adjust his actions if he wishes to succeed."[9] Further, the quantitative analysis implied by an inductive approach is further suspect in the Austrian mind.

As Mises wrote: "The fundamental deficiency implied in every quantitative approach to economic problems consists in the neglect of the fact that there are no constant relations between what are called eco-

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nomic dimensions. There is neither constancy nor continuity in the valuations and in the formation of exchange ratios between various commodities. Every new datum brings about a reshuffling of the whole price structure."[10]

He added: "The mathematical economists . . . do not notice the individual speculator who aims not at the establishment of the evenly rotating economy but at profiting from an action which adjusts the conduct of affairs better for the attainment of the ends sought by acting, the best possible removal of uneasiness. . . . They describe this imaginary equilibrium by sets of simultaneous differential equations. . . . They deal with equilibrium as if it were a real entity and not a limiting notion, a mere mental tool. What they are doing is vain playing with mathematical symbols, a pastime not suited to convey any knowledge."[11]

It is, to me, interesting that a school of thought that (through its founder, Carl Menger) helped uncover the subjective nature of value and whose students explained and foresaw the eventual collapse of communist systems decades before the fall of the Berlin Wall is so consistently ignored by economics departments and introductory economic texts.

I once asked an economics professor whose specialization is monetary theory whether he was interested in the Austrian school. His answer was a quick and undiluted "No." At the time I didn't know that his own area of expertise is perhaps where the Austrians have made their most significant contributions, providing a comprehensive theory of the business cycle tied directly to monetary policy.

It is perhaps because the Austrian school is so clearly associated with deductive reasoning and nonintervention that mainstream economists are left unimpressed. Austrian economics does not, for example, encourage endless debates over the proper interest rate or the best rate of growth of the money supply. Austrian theory makes it clear that the best monetary policy is one that bases money on gold or some other true media of exchange, as opposed to allowing politicians and bureaucrats to manipulate the money supply, creating false signals, artificial booms, and, inevitably, busts.

It is encouraging to hear, as I do from time to time, that Austrian economics is experiencing a revival and is arousing new interest, especially in light of the current recession. Let's hope its fundamental notions can begin to penetrate our institutions of economic learning and training. □

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1. Quoted on the economics department homepage of the St. Mary's University (Halifax, Nova Scotia) website, www.stmarys.ca/academic/commerce/economic/eco.html. Emphasis added.
2. Trinity College Dublin (Ireland), www.tcd.ie/Economics/what_is_economics.htm.
3. Lock Haven University of Pennsylvania, www.lhup.edu/economics/.
4. Indiana University-Purdue University Indianapolis, www.iupui.edu/~econ/whystudy.html.
5. Franklin P. Perdue School of Business, Salisbury University, www.salisbury.edu/Schools/Perdue/EconFin/whatisecon.asp.
6. University of Nevada, Reno, www.coba.unr.edu/undergrad/econ/info.html.
7. Ludwig von Mises, *Human Action*, 4th rev. ed. (Irvington-on-Hudson, N.Y.: Foundation for Economic Education), p. 92.
8. Ibid., p. 43.
9. Ibid., p. 2.
10. Ibid., p. 118.
11. Ibid., p. 250.

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Henry Ford, Upton Sinclair, and Limits on Consumer Choice

by Richard B. Coffman and R. Ashley Lyman

Early in the twentieth century two prominent Americans, one a capitalist, the other a socialist, enunciated surprisingly similar views on the relationship between product differentiation and consumer welfare. The capitalist, Henry Ford, had revolutionized the young automobile industry, using mass-production techniques to provide cheap cars to American consumers. But Ford did not believe in offering product variety. He produced only one model, the famous Model T, and, in his typically blunt way, stated his policy on consumer choice of colors as: "Any color, so long as it's black."[1]

During the same era the socialist novelist Upton Sinclair published a popular and influential novel, *The Jungle* (1906), which stated his views on the unimportance of consumer choice. Sinclair felt variety in consumer goods was a frivolous waste of resources, which could be eliminated under socialism. One of his socialist characters says, "consider the waste in time and energy incidental to making ten thousand varieties of a thing for purposes of ostentation and snobbishness, when one variety would do for use!"[2] And another socialist speaker says, "Since the same kind of match would light everyone's fire, and the same-shaped loaf of bread would fill everyone's stomach, it would be perfectly feasible to submit industry to the control of a majority vote."[3]

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Ford and Sinclair both actively opposed variety in consumer goods. How did their ideas fare in their respective economic systems, capitalism and socialism?

Sinclair dabbled in politics, but never acquired enough power to implement his ideas. However, his socialist brethren later took control of Russia, Eastern Europe, China, and Cuba, as well as other countries. Thus while there were no socialist economies when Sinclair wrote *The Jungle,* the world since has seen many actual socialist economies at work. None used democratic votes to determine the kind of matches or bread produced, but all used government to make these determinations, and all offered consumers very limited choices within product categories.

Socialist governments adroitly rejected majority rule in consumption decisions. If everyone wants the same kind of bread, why even have a vote? Everyone knows what everyone wants, so just let anyone make the decision. Well, not just anyone: officials of the Socialist Party should make the decision. The argument that socialists with the interests of the masses at heart could easily make decisions for them was often advanced as a rationalization for the political dictatorships that dominated socialist economies in the twentieth century.

Although rejecting majority rule, the socialist elite did institutionalize the one-size-fits-all consumption doctrine espoused by Sinclair and others. Socialist governments forced consumers to all consume the same

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goods, or none at all. Perhaps the most compelling image is that of millions of Chinese communists, all dressed in the same drab, ill-fitting clothing.

But the one-size-fits-all doctrine is rather odd, and raises an interesting question: Why should it be assumed that everyone wants the same things? Where is the evidence for this? In fact, there is plenty of evidence against Sinclair's assumption. When people are given choices among kinds of matches, bread, cars, houses, and so on, as they are in market societies, they do not all choose the same things. They choose a variety of products, revealing that their tastes and preferences are not identical. And in economies where variety in consumer goods has been limited by central planners, people quite eagerly pursue it when it becomes available.

Stories of Russian consumers trying to buy blue jeans and other personal belongings from Western tourists were commonplace for many years before the fall of the Soviet Union. In the early 1980s when communist China liberalized its economy to allow more consumer choice, Chinese consumers immediately began to reveal the variety of their tastes. Drab clothing was among the first things to go. A Chinese newspaper cheerfully reported: "The times of greys and blues and uniform dressing are gone forever."[4] Another observer reported: "At the television counter of the No. 1 department store, a salesman named Wei Teng Jun referees while his customers debate the merits of the 10 brands made in Shanghai. 'They are very brand conscious,' he says."[5]

A longing for both plenty and variety in material goods was certainly an important element in the social and political unrest that brought down the socialist systems of the Soviet Union and Eastern Europe. The one-size-fits-all doctrine did not serve consumers well, but once institutionalized in socialism, it stayed in place for decades. Thus, socialism was quite kind to Upton Sinclair's anti-variety doctrine.

Consumers under Capitalism

How did capitalism treat the somewhat

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similar ideas of Henry Ford? The answer is found in the history of the U.S. automobile industry in the 1920s and '30s. Early on, Ford's simple, cheap, black Model T dominated the automobile market, sending Ford's market share soaring to 59 percent in 1921.[6] General Motors, in contrast, was a small firm at this time, with only 16 percent of the market in 1924.[7] However, unlike Ford, it had embarked on a course of product differentiation, offering cars in "a wide variety of makes, models, colors, interiors, and equipment," and making annual model changes.[8] By the mid-1920s consumers were deserting the standard black Model T in droves and buying instead the more varied, stylish, distinctive cars sold by GM. By 1927 GM's market share had rocketed to 43 percent, while Ford's had plummeted to about 10 percent.[9] Belatedly, Ford scrapped the Model T and introduced the Model A, recapturing some of its market share over the next three years. However, in time the Model A became as boring to consumers as the Model T had been, and Ford's market share began to decline again, never to revive

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COURTESY AUTOMOBILE MANUFACTURERS ASSOCIATION INC.

Henry Ford (1863–1947)

in this era. By the end of the 1930s GM's market share was approaching 50 percent, while Ford's was below 20 percent and still falling.[10]

In a competitive free-market economy a Henry Ford has no power to force all citizens to consume the same products. Rivals like GM are free to enter the market and compete by offering variety. Consumers, in turn, are free to choose among products. If Ford had been right that consumers were not interested in color and variety, his sales would have gone up and he would have made profits. Since he was wrong, his business and his fortune suffered.

Capitalism versus Socialism

The contrast between capitalism and socialism could not be more pronounced. Capitalism provides a mechanism for testing the validity of ideas like those put forth by Ford and Sinclair. Capitalist entrepreneurs must back up their ideas by putting their money at risk. There is competition among entrepreneurs and thus among the different theories about what consumers want. The market carrot-and-stick mechanism rewards the correct ideas with profits, and punishes the incorrect ideas with losses. Thus consumers are the ones who determine which ideas and economic theories survive in the marketplace.

Under socialism, however, political power determines economic patterns. Political figures and intellectual theorists who gain control are able to impose their ideas on consumers. The people with political power have a monopoly on that power, and thus do not allow other ideas to compete with their own. Ideas like those of Sinclair survive and dominate, not because they have passed a test of serving consumers well, but because they have the backing of the police power of the state, and, sometimes, of a police state. Bad ideas can survive so long as political power survives.

The implications of this contrast between capitalism and socialism were strikingly visible in the hours after the fall of the Berlin Wall. East Germans, victims of a system that had enshrined Sinclair's vision in drab uniformity, streamed into West Berlin and were stunned by the quality and unimaginable variety of goods available there in the stores. If the Henry Fords of the capitalist world had had their way, West Berlin would have been nearly as drab as East Berlin. But happily, capitalism provided a marketplace forum for more imaginative entrepreneurs to challenge the Henry Ford view of the world. Because the challengers prevailed, what East Germans feasted their eyes on in West Berlin showed the astounding contrast between 40 years of market-driven product development and differentiation in the West, and 40 years of politically driven product stagnation in the East. □

1. Robert Lacey, *Ford: The Men and the Machine* (Boston-Toronto: Little, Brown and Company, 1986), p. 284.
2. Upton Sinclair, *The Jungle* (New York: Buccaneer Books, Inc., 1984 [1906]), p. 333.
3. Ibid., p. 331.
4. June Kronholz, "Buying Spree," *Wall Street Journal*, October 26, 1983, p. A1.
5. Ibid.
6. Arthur J. Kuhn, *GM Passes Ford, 1919–1938: Designing the General Motors Performance-Control System* (University Park, Pa.: Pennsylvania State University Press, 1986), p. 312.
7. Ibid., p. 313.
8. Ibid., p. 89.
9. Ibid., pp. 312–13.
10. Ibid., p. 312.

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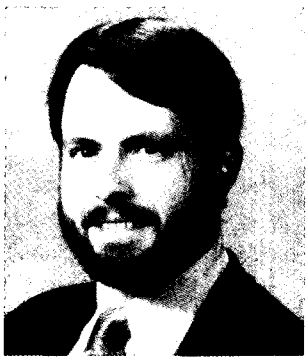

Seeing the World Plain

Washington, D.C., is filled with professions of good intentions by politicians and bureaucrats as they steadily strip away Americans' liberty and money. The political class uses even the most serious social problem to cement its control.

Elections, which H. L. Mencken called advance auctions of stolen goods, bring out the worst in politicians. But it's better to have elections than not, even though the political world usually looks about the same whether the Democrats or Republicans win.

Nevertheless, America, in contrast to its government, remains special. The uniqueness is most evident when traveling abroad.

Not so much when visiting other industrialized nations—what I call "real countries": Great Britain, Germany, Japan, Australia, and the like. Places that have advanced health care, modern telecommunications, democratic polities, respect for human rights, and abundant consumer goods. The United States remains freer and the opportunities remain better than in most of these states. But any American could live a prosperous and reasonably free life in them.

That's not the case with much of the globe, however. The bulk of the world's population lives in poverty and oppression. People spend their entire lives without opportunity or hope. The need for real reform—that is, freedom—is so much greater there.

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For instance, journey to the border between Thailand and Burma (Myanmar). I've gone several times with a group called Christian Freedom International (CFI; www.christianfreedom.org), which works on humanitarian and religious liberty issues. In this case, it assists ethnic Karen refugees displaced by the Burmese military.

Roughly 100,000 Karen live in refugee camps near the city of Maesot in western Thailand. Wooden huts cover undulating hills as far as the eye can see. The physical facilities are primitive, but people have organized themselves, especially around several churches (the Karen were converted by Christian missionaries in the mid-1800s). They are fed, housed, and clothed. Yet many people have been there for years; children have been born in the camps. None see any prospect of going back to their ancestral homes anytime soon.

Even worse are conditions in eastern Burma. Up to three million people have been displaced by decades of war. The junta's forces move in, rape the women, conscript men as porters, kill the villagers' livestock, destroy the buildings, and sow landmines to prevent people from returning. Two years ago government forces eradicated one small village just over the Moie river inside Burma six weeks after I visited.

Last summer I went to a larger, semi-permanent camp, protected by guerrillas with the Karen National Union (KNU). At least they have formal privies, in contrast to other villages deeper in the hills. And the meeting building and "freedom hospital"

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supported by CFI have electricity, which is absent elsewhere.

Still, it is impossible to escape not just dirt, but mud during the rainy season. Jungle green encroaches a few yards away. Only the careless would wander into hills covered with landmines and vulnerable to Burmese military attack.

Moreover, there is no hope for peace or prosperity. I met soldiers as young as 13, teenagers whose parents had been murdered by government troops. I met KNU soldiers in their 30s or 40s who have fought and killed for their entire adult lives. I met Burmese defectors who prefer uncertain exile to forced service under government thugs in Rangoon.

Life in Pakistan

Or journey to Pakistan. I went there last year as well. It is a military dictatorship, where General-President Pervez Musharaff has rigged the electoral process to create a democratic facade for his authoritarian rule. As in most of the Third World, state mismanagement of the economy has resulted in mass poverty.

On top of that is state-supported discrimination against minority faiths. Converts from Islam are often murdered. Non-Muslims find themselves prosecuted for blasphemy. No one even bothers to mouth the principle of equal rights under the law.

Worse, far worse, is North Korea. There are executions, mass starvation, and labor camps. And a stifling personality cult. Never, ever, speak ill of the Great Leader and Dear Leader. Commemorate them by photos in every room and buttons on every breast.

It's been a decade since I traveled to the so-called Democratic People's Republic of Korea, but what I most remember is the lack of life on the streets. Masses of people walking, but never a group leaving a restaurant laughing. Never anyone having an animated conversation. Just silent souls streaming by, crushed by a system dedicated to squeezing out the slightest spark of creativity and individuality.

Obviously, many Americans face serious challenges, some of them life-threatening. But most problems here pale in comparison to those burdening the average Burmese Karen, Pakistani, and North Korean. In the United States hardship is real, but an exception. For so many other people elsewhere it is a way of life, for one's entire life.

Seeing so many people in such straits highlights our responsibility for others, the obligation of those to whom much has been given to help those in great need. Moreover, such situations illustrate how the best way to help others is through private voluntary organizations that show up in isolated lands to feed and train people, create orphanages and schools, and maintain medical facilities. U.N. humanitarian agencies operate in Maesot, but none of them will work against the wishes of Burma's brutal junta to help save Karen children who have stepped on land mines or been infected with malaria on the other side of the river. CFI will, even in the most primitive and distant village and at significant risk to its own personnel.

In Pakistan Christians routinely are denied access to basic services, such as electricity, available to Muslim neighbors across a street or field. And aid workers complained that the government manipulated foreign assistance for its own ends, rewarding its supporters and denying funds to disfavored groups. Looking to government for help is the path to starvation. Only private aid really turns out to be aid.

Not that this is always a good answer. Private groups can't do much in North Korea. Some provide food, but their activities are constrained by Pyongyang's dictates. Still, every little bit of private engagement helps, though often only a little bit.

Although I've always disliked jingoistic nationalism, even when applied to the United States, going to places like these causes me to grasp my American passport a little—actually, a lot—tighter. There is much wrong here. We desperately need to free our people, while addressing the sometimes desperate human needs that rightly unsettle our consciences. Even so, America remains a beacon of liberty for the world. □

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How Government Disables Private Disability Insurance

by Robert E. Wright

Taxed Social Security earnings determine the level of three major types of Social Security benefits—the life annuity at the center of most discussions of Social Security, survivors' benefits, and disability benefits—available to individual working Americans at any given time. All three benefits were originally the bailiwick of privately owned and managed business firms. Those firms, called life insurance companies, remain the most efficient and just method for protecting individuals from the economic travails of dying too young (life insurance), dying too old (life annuity), or losing the ability to work (disability). The economics of disability will be discussed here.

In the late 1910s, life insurers in the United States began to offer insurance against the risk of "total" and "permanent" inability to work by offering, in return for a rationally calculated premium, periodic cash payments to life-insurance policyholders if and when they became disabled. Rather unwisely, the companies linked the amount of the payment to the face value of the policy rather than to the policyholder's current income. Predictably, during the Great Depression disability claims skyrocketed. Though not as liable to abuse as unemployment insurance, disability insurance claims are subject to fraud, misrepresentation, and ambiguity. Insurance companies suffered losses, but at the same time they learned that disability insurance will be abused unless the monthly payment is less than the policyholder's net remuneration from work. As the payment approaches or exceeds take-home pay, the policyholder will find it increasingly tempting to claim disability.

Life insurers also learned that individuals are not equally likely to suffer from a disabling illness or accident. As they learn more about the variables that increase the likelihood of disability, they develop premium rate books which ensure that each policyholder pays an actuarially sound premium based on the probability that he will become disabled. Moreover, simple business competition ensures that disability premiums tend toward their rational or natural level. If an insurer charges premiums that are too high, it makes large profits and attracts new entrants that in turn create downward pressure on premiums. If an insurer charges premiums that are too low, it suffers losses until it raises premiums or exits. Regulations and artificial barriers to entry limit the efficiency of the market to some extent, but all in all, market forces prevail and disability premiums are as rational and fair as the government allows.

In addition, life insurers have incentives to

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pay legitimate claims in a timely manner, to deny spurious claims, and to monitor disability beneficiaries closely. Any insurer that fails to pay legitimate claims, or that delays payment, will see its reputation suffer. Likewise, any insurer that pays fraudulent claims incites further instances of moral hazard and soon becomes unprofitable. Similarly, the profitability of insurers that do not regularly check to ensure that beneficiaries remain disabled also suffers. Insurers therefore give their claims representatives incentives to treat policyholders fairly, which means catching fakers but not begrudging the truly disabled their contractual due.

Equitable Market

Indeed, the private system of disability is, like all free markets, equitable. Individuals can choose to go uninsured if they desire; healthy individuals who desire coverage may obtain it at a rational and competitive market price. Claimants are treated fairly; if a disagreement arises, both parties have access to objective courts of law, arbitration proceedings, or private negotiation. In borderline cases, for example, parties are free to settle the claim with a lump sum payment or a reduced level of periodic payments.

Private disability insurance became an even better bargain in the 1950s because of the rapid proliferation of "group insurance," a fringe benefit many employers offered to employees. For a variety of reasons, group insurance greatly reduced insurers' administrative costs, allowing them to offer the same coverage for lower premiums. The same incentives to offer low-cost policies and excellent claims services held as strongly for group insurance as for individual disability insurance.

Private disability insurance, then, be it of the individual or group variety, is economically efficient. Wealth is redistributed from healthy policyholders to disabled ones, but only by the terms of inviolable contracts properly priced. Consumers are free to choose the companies with which they wish to attempt to contract. Albeit subject to certain regulations, companies are free to accept or reject applicants as their underwriters see fit. Accepted applicants exchange cash premiums for "peace of mind," the knowledge that should they become disabled they and their families will not be left destitute.

The Social Security Administration's (SSA) disability benefit is supposed to create that same "peace of mind." The mechanism through which it functions, however, is much different from that of private disability insurance. Those differences render the Social Security disability-benefit system both unfair and inefficient.

The system began in 1950 as a joint federal and state grant program called Aid to the Permanently and Totally Disabled. Coverage was expanded in 1956 to include cash payments to disabled workers age 50 to 64. As is typical of government entitlement programs, coverage ballooned with each passing decade. By 1960, over half a million Americans were receiving monthly disability payments.[1] Age restrictions were dropped; in the 1970s supplemental disability coverage (Supplemental Security Income or SSI) was extended to all Americans regardless of work history. (SSI, in other words, is essentially a welfare benefit, so it will not be explicitly examined here except insomuch as it shares certain administrative characteristics with the disability "insurance" program for workers.)

Social Security disability (SSDI) payments are a function of each claimant's individual work history, specifically the average of taxed Social Security earnings. At first blush, the system seems fair; those who paid more in taxes should receive more in benefits. However, the distribution of earnings over time is neglected, so it is quite possible for an individual with a declining income, a common phenomenon in today's fast-changing economy, to receive a disability check that far exceeds his current wage.

For instance, a 35-year-old who began work in 1988 earning $20,000 a year, and who received a $2,000 raise each year, would have earned $46,000 in 2001. According to the SSA's online calculator, if he became disabled he would receive a bene-

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fit of $1,480.30 per month regardless of how much he made in 2002 or was likely to earn in the future. According to that same calculator, an individual who earned $100,000 each year between 1988 and 2000, inclusive, would, if disabled, receive $1,925.80 per month, even if he earned nothing in 2001 or 2002. As private insurers long since discovered, such incentives will cause claim levels to rise, especially during recessions, be they national or merely sectoral in scope.

Process Tightened

To buffer upward trends in claims, the SSA tightens its claim process. Initial claims screening is conducted not by the administration itself but by state agencies called "disability determination services." The SSA at first instructed the disability determination services "to adjudicate claims with the presumption that a claimant was eligible when the preponderance of the evidence so indicated." In the face of the recession that gripped the nation in the late 1970s and early 1980s, however, it raised the bar, insisting that the claimant establish eligibility "beyond any doubt." Disability claim allowance rates plummeted between 1977 and 1982, but then trended higher as politicians and courts brought pressure on the SSA to make its claim process less stringent. It relented, but grudgingly. Unbelievably, it allowed claims-acceptance criteria to vary by state and region based on federal court rulings, which held only in the district where propounded. Clearly, the claims process was, and remains, a highly politicized one.

Moreover, the claims process is often a slow one. In 2001, the average processing time for a Social Security Disability claim was 106 days.[2] Average processing times for private disability policies are far shorter.

Social Security disability decisions may be appealed, but only to the government's own courts. The first appeal is heard by a regional administrative law judge, the second by the SSA's own Appeals Council, the third by a federal judge. It is extremely difficult to win on appeal without the aid of an attorney and even then success is far from assured. The process can take years, and even a decade or more, to play out. The government will pay interest if it loses on appeal, but that does nothing to put food on the table of the disabled's family.

Worse yet, if you are one of the 90 percent of Americans covered by Social Security, you cannot opt out of the disability coverage. You must pay the tax whether you want to or not. This coercion is necessary because the tax rate, which is a flat rate not adjusted by risk factors, not even major risk factors such as age and gender, is inherently unfair to many taxpayers: it far exceeds the premiums they would have to pay for comparable coverage from a private insurer. The purpose of the system, after all, is to redistribute wealth. The primary redistribution is from those less likely to become disabled (young, male, high-income) to those more likely to do so (old, female, low-income), and the secondary redistribution flows from all citizens to the government bureaucratic machines that collect the taxes and administer the program.

The political economy of the Social Security disability movement is in this regard most telling. After World War II, increased income tax rates and reinvigorated labor unions both pressured employers into providing employees with more fringe benefits, including pensions and group life, health, and disability insurance. Many employers (but notably not life insurers) saw expansion of the Social Security system as a means of reducing their labor costs. With expanded Social Security benefits, employees put less pressure on employers for extensive fringe benefits because the employers appeared to be footing half the Social Security bill. In reality, however, employers' contributions to Social Security are mere accounting legerdemain; employees pay the entire tax, half in the form of a direct payroll deduction and half in the form of reduced wages. Contrast that situation with bargaining for fringe benefits, which employees knew reduced their gross pay but increased their net remuneration because of their differential tax treatment. Moreover, employees realized that

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group insurance was cheaper than individual insurance, other things equal.

Perhaps worst of all, SSDI is economically inefficient. Due to its coercive nature, no competitive business pressures are, or indeed can be, exerted on the SSA. Its claim and appeals process can remain slow, expensive, inaccurate, and politically motivated without any fear that it will somehow lose business. No private insurer can cut into its market share. Unfortunately, the converse is untrue. The existence of Social Security disability benefits, no matter how inefficient and inadequate, reduces consumer demand for private insurance. That "crowding out" reduces the efficiency of private disability insurers by reducing private insurers' gains from scale and by complicating consumer purchasing decisions. Many of the faults of the market for disability insurance, insignificant as they are compared to the problems with Social Security, stem directly from the government's awkward and inefficient intrusion into the disability business. □

1. See www.ssa.gov/history/history6.html.
2. Disability FAQ, www.ssa.gov.

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IDEAS ON LIBERTY
FEBRUARY 2003

Take Your Bike Helmet to the Safety Museum

by Ted Roberts

I like to bike down to our neighborhood park. The wind sings along with the spinning bike wheels, an easy, five-minute downhill ride. On the way down, you coast like a hockey puck on buttered ice. Of course, going home is a chore that would daunt Sisyphus. As they say, there ain't no free lunch.

But the destination is worthwhile because Willow Park boasts grass-bordered, tree-shaded bike paths as well as soccer and football fields, two baseball diamonds, and tennis courts.

Strangely enough, this bandbox of a park doesn't attract many kids or customers of any age. Were it owned and operated by Walt Disney Enterprises, it would have closed decades ago. But the mayor, who manages my city without benefit of shareholders or owners, never fixates on the bottom line. He loves taxpayers with unzippered wallets who swoon with compassion every time he mentions "our kids." And parks are for kids, aren't they? Everybody says so.

So, even though bereft of youthful laughter, the city keeps Willow Park open, which is great if you're one of the few users, like me. I love those free tennis courts and the green space to bike in. I commend and appreciate the generosity of my fellow municipal taxpayers who provide me this absolutely free entertainment complex. It's almost my private domain.

It is small and natural. Sometimes, the spring beside the football field bubbles over and muddies its banks. Sometimes a tree falls over. It lies there for months reminding us that trees fall and new plants spring up around their splintered stumps. This is not Disneyland. Nobody is picking up trash except the blackbirds who confiscate shredded paper or small sticks—construction materials for their spring nest-building.

But there's something eerie about Willow Park. Except for the blackbird chatter, it's too quiet. No kids. No treble voices exulting over touchdowns or homers, or an ace on the tennis court. Soccer field, baseball diamonds, and a pond where you can snag a careless crawfish—but no young sportsmen? Where have all the children gone? Has some tax-crazed Pied Piper led them all into the Tennessee River? This park, built for the molding of young bodies and spirits, is childless. Barren as a pond without tadpoles.

The few kids I see are—like me—riding bikes. Probably on their way to visit a lucky friend with a wall-size TV lovingly provided by misguided parents. And you wouldn't believe the headgear on the few young bikers. *They are wearing helmets*—like a fullback, like an infantryman, like an M-60 tank commander, like a construction worker beneath a scaffolding of hot rivets and steel girders. And the helmets are only plastic. A falling tree limb could still dent the youthful skull.

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Now don't get me wrong, I love kids and I would rain salty tears over a head-damaged child. But life is full of cautions, each bearing a price tag. Remember, that old chestnut "There's no free lunch" applies to helmets as well as lunchrooms. A glass of beer at the Free Lunch Saloon (with spicy pastrami, roast beef, bologna, and pickles) costs a dime. Across the street at the saloon with no sandwich fixings, a schooner of their best was a nickel. Or maybe the bar with the free lunch was also a nickel, but it was only near beer (half tap water). One way or another, you are going to pay for that lunch.

Obviously, as we've learned since, the concept applies universally, even to bicycle helmets. So, consider the price of that plastic helmet:

- The chances of damage to the child's frame on the trip to the helmet emporium is as real as the tumble off the bike. The longer the trip the better the odds you'll be rammed by a large, smelly garbage truck. (Of course, you could leave him at home where he'd be perfectly safe—unless a mischievous ceiling came down on his head.)
- Even worse than the above is the wordless statement you make to the kid when you insist on the cranial armor and other defenses recommended by a safety-crazy culture. The world's an abattoir, you implicitly say. You could get killed out there; better protect yourself. He or she growing up will face many trials of courage with you at his side spouting reassuring speeches dispelling fear. But the helmeted apple of your eye will forget your inspiring words and remember your fearfulness when you strapped that plastic hat on him. They do as you do, not as you say.
- Significant head injuries to nonprofessional, youthful bike riders are so rare that I never encountered such an injury among acquaintances, family, or friends. Yes, of course it happens, but I cannot recall one incident in many decades of observation. Unscientific, anecdotal, I know, but remember that's the only kind of data that is totally unslanted. The well-meaning, but expansive CDC (the Centers for Disease Control, our government's keeper of statistics on bike injuries) sometimes just can't brake for large, but meaningless numbers. And don't you wonder how bike injuries fall under the heading of "communicable diseases"?
- And let's not forget the dollar cost: 40 to 120 bucks depending how insecure you feel at the moment of purchase. That kind of money will buy at least three annual subscriptions to personal safety and health magazines. A great crutch for the caring parent.

Wind Massage

But the best of the anti-helmet arguments is the wondrous feel of the wind massaging head and scalp, and the incentive it provides for hoisting the youthful rump off the couch and mounting up.

Our old friend, Fred Bastiat would say, Aha, the tangible positive "seen" is that protective helmet. The "unseen" price is (a) 120 American dollars, the world's finest, (b) the joy of the wind tousling your hair, and (c) the sense of security necessary to a healthy child.

One more consideration on the scales of judgment. If you believe your child needs a helmet to pedal his bike at 10 mph in a neighborhood park, you ought to have nervous palpitations over any car trip longer than the length of your driveway. Just guess where most injuries occur? Maybe, better yet, you should be checking out the price of full body armor. □

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No Shortcuts

For about ten years a number of writers sympathetic to the free market have rejoiced that more and more Americans have become shareholders in corporations through retirement accounts and direct investing. These commentators predicted that widespread stock ownership would effect a radical change in Americans' attitudes about economic policy. No longer would they be sympathetic to big government, high taxes, and pervasive regulation of business. Why? Because as owners of stock, they would recognize that their material self-interest depended on the vibrancy and freedom of private enterprise unencumbered by the state.

This view has been widely held among pro-market advocates. It has even become part of the case for privatization of Social Security through individual retirement accounts.

This sounded like a reasonable expectation. But it had some telltale flaws. For one thing, it sounded too much like Marx's view that property relations determine ideology. There was no real reason to believe that just because people owned stock and had a material interest in rising stock values, they would not want the government to interfere with business. After all, they might want government to do something to boost stock values. It would take economic education to realize that this cannot be done on a sound basis.

The theoretical argument over whether the "investor politics" hypothesis is correct has now gotten some empirical assistance. In the *Washington Post* last fall, Robert Samuelson stood the sanguine prediction up against the facts and drew some interesting conclusions. He began bluntly: The "investor politics" hypothesis is "the exact opposite of the truth. Greater shareholding leads to more—not less—government activism and regulation. It increases—not decreases—the political impulse to tinker with business and the stock market. The investor class behaves like other aggrieved groups, from farmers to steelworkers. When they have problems, they look to government for sympathy and help. If there are only a few shareholders, it doesn't matter. When there are roughly 80 million—as now—it matters a lot."

That is a sobering thought.

Samuelson noted that an "exhaustive" analysis of opinion surveys done at the American Enterprise Institute demonstrated that there was no increase in favorable attitudes toward business in the 1990s. For example, in 2000 the percentage of people agreeing that business should make "maximum profits" (36 percent) had not changed much since 1981 (33 percent). If the "investor politics" theory were correct, we should have seen a dramatic improvement in such numbers.

Samuelson made an important point when he wrote, "One reason that more shareholding didn't change the national consciousness is that stocks *were not promoted as an exercise in risk-taking,* which is the nature of

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capitalism. Instead, stocks were sold as a free-enterprise *entitlement*. If you invested and stayed in the market, you had to get rich. Risk was almost nonexistent, because stocks outperformed rival investments." (Emphasis added.)

Keep in mind that the explosion in investing came when it looked as though the market could go in only one direction—up. In truth, it was entirely reasonable to expect that when the market went down, the new investors, given their low level of economic and moral-political education, would cry out for government help.

In other words, if people got into the market without understanding the nature of free markets, risk, and individual rights, why would anyone think they'd react in a pro-capitalist way when their fortunes soured? Why, indeed? We have long known that businessmen can be the most anti-free-market people around. When times get tough, they are the first to seek tariffs, subsidies, and antitrust assaults on their competitors. Why should we be surprised when amateur stockholders react that way?

Politicians Took Credit

This is even less surprising when we consider that all during the boom, politicians took credit for the prosperity. Without knowledge of how markets work, people were willing to believe this. And if politicians could create a boom, then surely they could reverse a bust and restore good times. People believed that too. And the politicians were just as eager to encourage that belief. What better way to get re-elected? Add to this a few business and accounting scandals and 401(k) depletions, and any affection for free markets in the new investor class, given its economic illiteracy, was bound to evaporate.

We all know the results: a flurry of new laws out of Congress, supported by a "pro-business" Republican President, promising to "restore confidence" in the stock market, laws that we well know will do no such thing, much less restore the upward trajectory of "the economy."

Not everything that the investor class favors is bad. Ending the double taxation of dividends, of course, is a good idea. Similarly, surveys show that new investors favor ending or cutting the capital gains tax. But a commitment to having *one's own* taxes cut does not a free-market advocate make. I shudder to think what those investors think about antitrust law, the Securities and Exchange Commission, and Martha Stewart (that is, "insider" trading).

Samuelson concludes:

> The new investor politics is not what conservatives imagined. Instead, it combines investors' bruised sense of entitlement and politicians' infinite capacity for empathy. The ostensible aim is to improve the integrity of the market. The unstated aim is to restore higher stock prices, which is what investors want. *The distinction between social entitlement and private investment is blurring.*
>
> The blurring is a tricky and possibly treacherous development. . . .[T]rying to make the market "safe" for the middle class may entail so many rules that they perversely suffocate the genuine risk-taking necessary for a vibrant economy. The market is too complex for the government to control, and the goal—even implicit—of making it rise is hazardous. In the end, capital gains cannot be an entitlement. [Emphasis added.]

What's the lesson here? There is no shortcut to a free society. Objectively having a stake in economic freedom is not the same thing as *understanding* one has a stake in it. *That* requires economic knowledge and a grasp of the broader freedom philosophy: individualism, natural rights, private property, and the rule of law. □

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Blurring the Civilian-Military Line

by Gene Healy

The soldier's mission, as soldiers often phrase it, is "killing people and breaking things," and they're trained accordingly. In contrast, police officers, ideally, are trained to operate in an environment where constitutional rights apply and to use force only as a last resort. Accordingly, Americans going back at least to the Boston Massacre of 1770 have understood the importance of keeping the military out of domestic law enforcement. That understanding is reflected in the Posse Comitatus Act (PCA) of 1878, which makes it a criminal offense to use U.S. military personnel as a police force.

The phrase "posse comitatus," Latin for "the power or force of the county," refers to the sheriff's common-law power to call on the male population of a county for assistance in enforcing the laws. The PCA forbids law-enforcement officials from employing the U.S. military for that purpose. Congress passed the act in response to perceived abuses associated with the practice of using U.S. Army troops to police the Reconstruction-era southern states. But the PCA has a policy rationale that transcends its particular origins; as one federal court explained: "It is the nature of their primary mission that military personnel must be trained to operate under circumstances where the protection of constitutional freedoms cannot receive the consideration needed in order to assure their preservation. The posse comitatus statute is intended to meet that danger."

In the year since the terror attacks of September 11, however, we've heard a slowly building chorus of calls to amend or weaken the act and to give the U.S. military a hands-on role in domestic security. In October 2001, Senator John Warner, ranking Republican on the Senate Armed Services Committee, told Deputy Secretary of Defense Paul Wolfowitz that the posse comitatus principle may have outlived its usefulness; Wolfowitz agreed. Though Secretary of Defense Donald Rumsfeld had insisted that there was no plan to seek changes in the law, in July 2002 the White House released its National Strategy for Homeland Security, which called for a "thorough review of the laws permitting the military to act within the United States." Perhaps most troubling were the comments of General Ralph E. Eberhardt, head of the newly designated Northern Command, which directs all military forces within the United States: "We should always be reviewing things like Posse Comitatus and other laws if we think it ties our hands in protecting the American people."

Of course, where appropriate, we *want* constitutional and statutory constraints to "tie the hands" of the authorities in their pursuit of domestic security. Safety and security are not the only ends of government—as Lord Acton reminds us, liberty is our highest

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political end. The Posse Comitatus Act is, alas, a weak and porous barrier to military involvement in domestic law enforcement, but it's designed to protect both our liberty and our safety. Changed circumstances after September 11 provide no compelling reason to weaken it further.

To understand just how implausible it is to suggest that the PCA ties the military's hands domestically, it's necessary to understand how the PCA works. The statute makes it a criminal offense for anyone to use U.S. armed forces to "execut[e] the laws." But this does not bar any and all uses of armed soldiers for domestic law enforcement. First, the courts have held that "executing the laws" consists of hands-on policing: searching, arresting, and coercing citizens. Thus, the act does not prohibit the military from providing equipment, advice, and training to civilian authorities—even though such civil-military cooperation often works to inculcate a dangerous warrior ethos among domestic peace officers.

Second, the PCA applies only to federal troops: army regulars and federalized National Guardsmen. If Guard units remain under the command of state governors, the PCA is unoffended—even if injudicious use of troops leads to events like the killing of four students at Kent State in 1970.

Third, the act does not bar the use of federal troops even for hands-on policing, so long as Congress has passed a statutory exception to the PCA—and there are statutory exceptions in place that permit the military to operate domestically where an attack with weapons of mass destruction threatens imminent loss of human life. Finally, even though the act has clearly been violated any number of times since its passage, no one has ever been prosecuted for violating it.

How Would the Military Be Used?

To date, none of the prominent public figures calling for a revision of PCA have explained what sorts of operations they want the military to carry out in the domestic fight against terrorism. Putting aside fears about collateral damage to civilians from the deployment on the home front of troops trained to fight wars—where would it make sense from a security standpoint? No one—not Warner, not Wolfowitz, not Eberhardt—has come forward with a specific example of a situation in which soldiers should be given arrest authority.

Nor should that be surprising: it's difficult to think of a domestic situation where military deployment would be useful in corralling terrorists. How can U.S. troops be effectively employed at home to prevent a shoe-bomber, a hijacker, or the release of nerve gas in a subway system? The cruel genius of asymmetric warfare is that it operates to neutralize the advantages the U.S. army enjoys against any conventional foe.

The U.S. military is the most effective in the world, but it's nonetheless a blunt instrument—devastating in set-piece battles, but ill-suited to a home-front fight against al Qaeda saboteurs and assassins. That point was perhaps best illustrated on Thanksgiving weekend in 2001, when authorities in Florida stationed a tank outside Miami International Airport, as if the next terror attack would come in the form of an al Qaeda mechanized column.

And the very bluntness of the military instrument makes it a dangerous tool to employ on American soil. The legacy of American military involvement in domestic affairs is not a proud one. As constitutional scholar David Kopel has noted, the U.S. army has been used repeatedly to suppress unionization and break up strikes, as in 1899 at Coeur d'Alene, Idaho, when military forces imposed martial law on the area for two years. President Truman's unconstitutional seizure of U.S. steel mills during the Korean War was carried out by the U.S. Army. More recently, in 1981, Congress passed legislation designed to increase military involvement in the war on drugs.

Misuse of this authority helped lead to the 1993 tragedy in Waco, Texas. Federal law enforcement authorities used false allegations of methamphetamine trafficking by the Branch Davidians to obtain military hard-

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ware and personnel. Indeed, it was U.S. Army Delta Force commanders who advised federal agents to launch a tank assault against the Branch Davidians' dwellings. The result was more than 80 dead, including 27 children. And in 1997, a Marine anti-drug patrol shot and killed high-school student Esquiel Hernandez, who was shooting a .22 caliber rifle while tending goats on his own farm in Texas near the Mexican border. The Justice Department paid out $1.9 million to the Hernandez family as settlement of a wrongful death lawsuit.

Despite the dangers that inevitably accompany the use of soldiers as police forces, civil-military separation continues to erode. Because the U.S. military is so devastatingly effective in the fights it's designed for, public officials have increasingly sought to employ it for fights it's not. Most recently, during the month-long hunt for the Washington, D.C.-area sniper, Secretary of Defense Donald Rumsfeld approved the use of Army RC-7 surveillance aircraft to find the killer terrorizing greater Washington. The low-flying planes, crammed with $17 million worth of infrared sensors and other surveillance technologies, are typically used for tasks like monitoring troop movements around the DMZ on the Korean Peninsula. Federal officials argued that they could help pinpoint the sniper's location.

Old-Fashioned Police Work

At the time, however, constitutional scholar and criminal-justice expert Stephen Halbrook predicted that when the sniper was caught, it would not be through use of high-tech military hardware, but through old-fashioned police work. Halbrook was right. In the end, the killers' greed, a credit-card number, a fingerprint, ballistics work, and a witness identification of the car at a rest stop in Maryland led to the arrest of John Allen Muhammad and John Lee Malvo.

What should we make of federal officials' readiness to use the military to solve a domestic murder spree with no solid connection to international terrorism? First, it should be noted that use of the Army planes did not violate the PCA. If the Army had employed Delta Force counter-snipers on the ground, hunting Muhammad and Malvo, that would have been a clear violation of the Act and a serious threat to civil-military separation. But as noted, the courts define "executing the laws" as arresting, shooting, searching, and laying hands on or coercing citizens; they have not held that provision of advice or equipment constitutes execution of the laws in violation of the PCA.

That does not mean that Pentagon involvement in the sniper hunt is no cause for concern, however. Federal officials' eagerness to seek military help in this case suggests that we'll see more military involvement in high-profile investigations in the future. As former U.S. Representative Bob Barr put it, "If you use this as a precedent, where do you then draw the line? The next time you have a sniper, do you bring the military in after two deaths?" And even where the military's role is limited to advice, training, and provision of equipment, the erosion of the civilian-military line is troubling. After all, to the best of our knowledge, Army personnel at Waco limited themselves to provision of equipment and advice. Even that limited involvement helped lead to the greatest disaster in U.S. law-enforcement history.

Increasingly, public officials are coming to view militarization of law enforcement not as a last resort for situations in which civil order breaks down entirely, but as a panacea to be used whenever public safety is threatened. In the midst of the sniper ordeal, then-Maryland Governor Parris Glendening announced he was considering using the National Guard to provide security at polling stations on election day. Put aside concerns about effectiveness (the snipers shot one victim who was standing less than 50 yards from a Virginia state trooper) and collateral damage to innocents (what, after all, are soldiers trained to do when they come under fire by a sniper?): consider the ominous image of armed soldiers surrounding polling places. It's an image one normally associates with a banana republic, not a free, democratic one. □

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IDEAS ON LIBERTY
FEBRUARY 2003

Frankenstein Television

by Michael Heberling

The televisions that Americans have loved for over 50 years will soon become obsolete. The Federal Communications Commission (FCC) has mandated that the analog TV broadcast signals be turned off in 2006. After that date all TV broadcasts will be "digital."

This mandate appears to be at odds with the wishes of the American people. In spite of the outstanding theater-quality picture and sound on the high-definition televisions (HDTV), they account for less than 1 percent of all the TVs in American homes. It is hard to win the digital revolution when there are over 265 million of the primitive nondigital TVs still in use. That's 2.4 sets per household. Since these TVs have a lifespan of between seven and ten years, most will still be alive and kicking when the federal government flips the "off" switch. So unless the government blinks, Congress can expect to hear from a lot of angry constituents. Thus far the federal government has been hanging tough. In 2006, America will have five choices: Buy a digital-ready TV, subscribe to cable TV, subscribe to satellite TV, buy a set-top box converter so that your old-fashioned TV can decode the digital signal, or start reading books.

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Joel Brinkley of the *New York Times* has noticed the anomaly of government's ordering a new consumer technology. "No other national technological transition has ever been backed by this sort of government decree. Nobody was forced to trade a horse for an automobile, a Victrola for a radio or a typewriter for a computer."[1]

Why aren't the people buying these phenomenal government-endorsed TVs? There are two primary reasons. The first is cost. Although the price has started to come down in the last couple of years, HDTVs are still a luxury that few can afford. The price ranges from $1,300 to $10,000. It gets worse. You will still have to cough up another $650 for a set-top box converter to receive the digital signal.[2] In contrast, the average complete total price for a nondigital TV ranges between $200 and $400.

The other reason for not buying an HDTV is right now there is little to watch. For the few who decided to buy an HDTV, their biggest complaint was the lack of high-definition programming.[3]

Ironically, a surprising number of people use their HDTV just to watch DVD movies. The next time you are at an appliance store and see one of those "gold-plated" HDTVs with the "fabulous" cinema-quality picture and sound, ask the salesman: "Is that a broadcast high-definition picture or is that picture coming from a DVD player?" After a great deal of obfuscation, he will probably say: "Um . . . DVD player."

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As with all products, consumers weigh tradeoffs. There is no doubt that many shows will look fantastic in high-definition color. However, many people (in fact, the overwhelming majority) have decided that it is really not all that important (nor worth the money) to be able to see every pore on Larry King's face or to hear Katie Couric's voice in theater-quality Dolby sound.

Since HDTV is designed to work best with screen sizes of 45 inches or larger, what about all those small TVs in the kitchen? Consumers have apparently decided that a giant HDTV home-entertainment center on the kitchen counter is not very practical. Watching TV on a 13-inch color set first thing in the morning while eating corn flakes may not be the greatest viewing experience possible, but the American people have decided that it is good enough. Unfortunately, this lackadaisical attitude is at odds with what Congress and the FCC think consumers want.

How does the federal government justify its efforts to pawn off digital TV on a public that is clearly not interested? It appears that the ghost of industrial policy past has come back to haunt America. In the case of HDTV, we have an elitist government making policy based on what it thinks will be good for industry and what it thinks an uninformed public really wants. To the FCC, the digital TV revolution is far too important to be left to the inefficient and time-consuming whims of the marketplace. Since there is no individual industry or company that has the wherewithal or long-term vision to win the "digital revolution" by itself, the FCC will use its omnipotent knowledge and its mandate power to insure the correct outcome.

But how smart is the FCC really? Does its track record in choosing winners warrant an "Oracle of Washington" status? Should we entrust the adoption of digital television to the wisdom of the FCC with its heavy-handed mandates? Or, should we simply let the marketplace decide? A review of the last TV revolution provides some interesting insights.

The FCC and the Color TV Standard

In the early days of television there were three competing color standards vying for the FCC's blessing. The CBS Field Sequential System had the inside track. However, it had a major flaw. It was incompatible with the nine million black-and-white sets already in homes across America. Viewers with those TVs would not have been able to watch a show broadcast by that system (even in black and white) without a costly converter. If this incompatible standard were to be adopted and the public refused to buy the converter, color broadcasters would be beaming their signals to a nonexistent audience. The other two competing color systems were compatible with black-and-white sets. Would you like to guess which system the FCC picked?

On September 1, 1950, it approved the CBS system by a 4-to-1 vote. But a year later something strange happened. CBS discontinued its color broadcasts. Maybe the lack of an audience contributed to the decision.[4]

To no surprise, on December 17, 1953, the FCC publicly changed horses and adopted the National Television System Committee (NTSC) compatible color system as the U.S. standard. It was based on one of the black-and-white-compatible designs that the FCC had dismissed as technically inferior. Color broadcasts using the new FCC standard were authorized to begin in January 1954.

Even though the compatibility problem was resolved, the transition from black and white to color was still exceedingly slow. It took 12 years (1954–1966) before each of the three networks would have a full prime-time color lineup. It took 23 years (from 1954–1977) until 75 percent of the homes in America had at least one color television. Although slow, there was little "technology frustration" and there were no government-mandated transition deadlines to elicit the wrath of either viewers or broadcasters. A viewer with a black-and-white TV did not need a set-top box converter to see a color-broadcast program. It simply appeared in black and white.

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People could quickly grasp the concept of going from black and white to color. However, the average consumer today doesn't have a clue as to what going from analog to high-definition means. "Walt Disney's Wonderful World of High-Definition" does not have the same ring to it. Most would-be consumers have no idea what "better pixilation" is or really care to know.

In the color-TV revolution 50 years ago, we had a government that eventually acquiesced to the realities of the marketplace. Today, we have a government hell-bent on riding roughshod over everyone in order to make its digital vision of the future a reality.

Opposing Sides in the Digital War

There are clearly two opposing sides in the "Digital TV War." As usual, the consumers are all alone on one side. Aligned against them are the federal government (Congress and the FCC) and its two allies: the National Association of Broadcasters (NAB) and the Consumer Electronics Association (CEA). The TV manufacturers, represented by CEA, clearly had the most to gain from the digital war. If crawling in bed with the federal government would force every family in America to buy a $1,500 TV, why not go for it? In contrast, it was a mystery why the broadcast industry was also crawling in the federal bed.

As if part of a horror movie, this bedroom scene turned into a nightmare. The first bedfellow to start screaming when the lights went out was the broadcast industry. The TV manufacturers would be next.

From the earliest days of the digital revolution, the NAB has been fighting (against the consumer and even against its own constituents) to make the government's vision of HDTV possible. The TV manufacturers' business model is obvious: "Sell millions of HDTVs to make billions." In contrast, the broadcaster's business model for HDTV makes absolutely no sense. It appears to be: "Spend billions to make millions." Advertisers pay to have viewers watch their commercials. If just a few viewers will see their commercials with a great high-definition picture, how appealing can this be to advertisers?

In April 1997 the FCC mandated that all TV broadcasts would be digital by 2006. As a result, each station would be forced to meet an aggressive digital-transition schedule. By May 1, 2002, all commercial TV stations were to be online with at least "some" of their programming in digital format.

And how successful were the commercial stations in meeting their deadline? Of the 1,240 commercial stations in the country, 68 percent failed to meet it. The FCC was clearly not amused. Although 772 stations were granted a six-month extension, another 71 stations had their requests denied. Those recalcitrant stations that choose to flout the authority of the FCC run the risk of having their broadcast licenses revoked.

The major reason for the failure to meet the deadline was cost. It is easy for the federal government to make mandates—they don't have to pay for them. For the small broadcast stations in "fly-over America," this digital mandate presents a severe financial hardship. The conversion price tag, for all stations, both large and small, starts at around $3 million.[5] High-definition broadcasting thus causes capital and operational expenses to skyrocket without any increase in revenue. It would appear that the concept of "making a profit to survive" is totally alien to the FCC bureaucrats since they operate in a taxpayer-funded bankruptproof environment.

The Next Victim: Television Manufacturers

While the nightmare for the broadcasters is ongoing, the nightmare for the TV manufacturers is about to begin. On August 8, 2002, the FCC voted 3 to 1 to require electronics manufacturers to include digital tuners in all new television sets by 2007. The actual phase-in date will depend on the size of the set. TVs with screens 36 inches or wider would be required to include the digital tuner by July 1, 2004.

The TV manufacturers feel that this mandate is absurd. The FCC's own data shows

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that only 14 percent of viewers watch TV using an over-the-air broadcast. The other 86 percent get their TV from either cable or satellite.[6] Since the overwhelming majority of viewers will never use the $250 tuner, why is the federal government forcing all TV consumers to buy a product they clearly do not want? Answer: the federal government feels that by manipulating the market, it can artificially create a demand for HDTVs where one does not currently exist. In theory, this will lead to a groundswell of real consumer demand for HDTVs. The CEA estimates that the federal government's mandate to stimulate that demand will cost $7 billion. The *Detroit News* calls this a "TV tax on consumers."[7]

The federal government's latest attempt at industrial policy has been, and continues to be, a fiasco. It is very clear that it has lost the digital TV war. Based on the incredibly slow pace of the transition to digital TV, it is incomprehensible that the American people will accept 2006 as the end of TV as we know it. The federal government did not mandate an end to black-and-white TV, and it should not impose a mandate this time either.

But don't expect the bureaucrats to learn the right lesson: on October 10, 2002, the FCC unanimously approved a new standard for broadcast digital radio.[8] □

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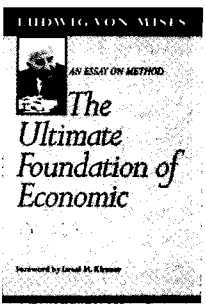
The Ultimate Foundation of Economic Science

An Essay on Method

By Ludwig von Mises
Foreword by Israel M. Kirzner



Mises' last book, which appeared in 1962, offers reflections of a lifetime. He explains in plain language the theoretical basis for all the amazing insights of the Austrian School. He discusses the methods of empirical sciences and focuses on the dynamics of a priori logic.

Most timely today are Mises' comments about intellectual crises of Western civilization. Mises displays his trademark devotion to liberty. For instance, he writes, "What transformed the world of horse-drawn carriages, sailing ships, and windmills step by step into a world of airplanes and electronics was the laissez-faire principle." Bravo!
(from a review by Jim Powell)

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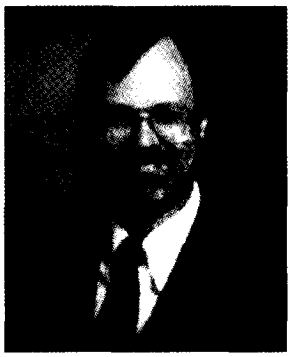
IDEAS ON LIBERTY
FEBRUARY 2003

James Madison: The Constitutional War President



Is it possible for a president to run a war effectively and obey the Constitution at the same time? Most historians would say no; after all, they persistently rank Abraham Lincoln and Franklin Roosevelt as two of the nation's greatest presidents. Lincoln and Roosevelt, as war presidents, centralized power, restricted liberty, and suspended key parts of the Constitution during their stints in office. Historians like men of action, especially when these actions seemingly help win wars.

However, James Madison, the first war president in U.S. history, did not set such a precedent. War emergencies, he argued, were tests to obey the Constitution, not ignore it. His conduct in the War of 1812 is illuminating, and worth reviewing.

The War of 1812 was peculiar in that the United States was not under attack, or even the threat of attack. Many, therefore, have argued that the war was avoidable. American commerce, however, was being restricted by the Napoleonic Wars between France and Great Britain. Furthermore, Britain was seizing American ships, kidnapping ("impressing" as it was called) sailors, and stirring Indians in the Northwest to launch raids on American soil.

In the diplomacy that led to war, Madison did not hold press conferences or buttonhole senators. He let Congress debate the problem and pass laws to deal with it. Macon's Bill No. 2, which Congress passed and Madison decided to sign, guided our policy in the two years before war. It offered peace and trade to either France or Britain if either would leave our trade unhampered.

When Britain persisted in halting American ships and seizing the sailors, Madison believed the United States should go to war. But he did not act on this belief until Henry Clay, leading a delegation of congressmen, urged him to support the war publicly before Congress voted on it. This Madison did, and Congress voted (79–49 in the House and 19–13 in the Senate) to go to war.

Once war was declared, it had to be funded. The previous year, Congress had refused to re-charter the Bank of the United States, and so the nation had no central bank to borrow from. Direct taxes were another possibility for raising money, but Madison avoided them during much of the war.

Instead, Madison, as commander-in-chief, worked with Congress to finance the war in part by privatizing it. The navy, for example, lagged far behind Britain in ships and manpower. Therefore, Madison urged private shippers to attack Britain, from the American coast to the British Isles. An estimated 526 merchants-turned-hunters stalked and attacked vulnerable British ships, commercial or naval. Any profits, from cargo or ransom, were split among captains and crew.

Some of these private ships were sunk quickly by the British, but others pestered and perplexed their enemies. The *Yankee*,

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from Bristol, Rhode Island, and the *American*, from Salem, Massachusetts, each won over $1 million in booty. Thomas Boyle, of Baltimore, took his *Comet* into British waters and won 40 hit-and-run skirmishes, and then outrageously declared Britain to be blockaded. America's mosquito fleet demoralized the Royal Navy and forced Britain to convoy all of their trade in the Atlantic Ocean.

The U.S. army, of course, needed cash for troops and arms. Madison, as co-author of *The Federalist Papers*, was suspicious of centralized power and argued persuasively for limited government at the constitutional convention. He tried to avoid taxing to support the war, calling it a dangerous precedent and a recipe for waste and a permanent bureaucracy. Instead, he worked with Congress and the Treasury to float about $80 million in government bonds; he urged private citizens to invest in their troops, and he funded most of the war doing that.

In an emergency bond drive in 1813, after a series of U.S. military defeats, four immigrants stepped up with over $9 million in cash to keep their adopted country in the fight. These men—German-born John Jacob Astor and David Parish, French-born Stephen Girard, and English-born Alexander Dallas—risked their wealth to defend the liberty they had used in building their fortunes.

White House Burned

During the war the army lost many battles, and some critics have faulted Madison for appointing weak generals. It's true that the Canadians captured Detroit, defended Niagara, and repelled American advances on Canadian soil. Then British troops, fresh from defeating Napoleon, invaded America, burned the White House, and chased officials out of Washington, D. C.

But Madison recovered well. He had at first appointed veterans of the Revolutionary War, men who were senior officers. They did poorly. But by the summer of 1814, he had younger men in charge, and the United States lost no major battle after that.

Madison handled adversity in a way that preserved individual liberty. When political opponents attacked him for military setbacks, he never jailed them, deported them, or shut down their newspapers—as did future war presidents. Even when hostile Federalists met to consider secession, Madison never interfered with their civil liberties, or those of anyone else. He asked aliens to register, and that was it.

Fighting a constitutional war was sometimes awkward and disjointed, but it ultimately succeeded. Madison, who had been second-guessed during the fighting, was commended afterward. His decision to conduct the war in an atmosphere of liberty had helped unify the nation and it proved popular at the polls. His Republican Party gained seats on the Federalists in the off-year elections in 1814. Two years later, James Monroe, Madison's loyal secretary of state, won the presidency in a landslide that caused the embarrassed Federalists to virtually disband as a political party.

In Madison's last year in office, he supported a revenue tariff, not direct taxes, to help pay back the loyal immigrant bondholders. Within 20 years, not only was the war paid off but so was the entire national debt. The federal government was returning a surplus to the states.

Marshall Smelser, a historian of the early Republic, ably summarized Madison's war presidency this way: "Madison's conduct has brought him condemnation as a weakling. Actually, the father of the Constitution was following his conviction that policy must rise from the people through their branch of government. . . . It is hardly a mark of weakness to take a firm view of the nature of the Constitution and to operate from it as a principle." □

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FEBRUARY 2003

Corporate Accounting: Still Evolving After All These Years

by Chris Edwards

Politicians were quick to blame recent accounting scandals on failures in the free-market system. But financial markets are far from free, and the government deserves a share of the blame for the scandals. For example, the distortionary tax code causes corporations to amass too much debt, which leaves them vulnerable to downturns. Also, the tax code encourages workers to hold their retirement savings in employer-sponsored plans, a source of contention in the Enron meltdown.

However, the accounting industry can learn lessons from the demise of Arthur Andersen and the various corporate financial shenanigans of 2002. Like any market institution, accounting does not work with perfection, however that might be defined. Instead, the industry has continually evolved to correct mistakes and meet new demands since the first specialized firms arose in London in the mid-1800s.

To get some context for recent scandals, I revisited two books on the history of Price Waterhouse (PW) that had been buried in my basement.[1] Accounting may strike some folks as boring, but the industry's development was integral to the rise of modern industry. Firms such as PW arose partly in response to government-created "rents" and partly from purely market demands, or spontaneous order.

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In Britain, the rents began with the enactment of new rules for bankruptcy in 1831. The law required independent specialists to liquidate a bankrupt firm's assets and to sort out creditor claims. Accounting firms prospered because Victorian England had high levels of insolvent businesses, which in turn reflected the high levels of entrepreneurial activity at the time. Bankruptcy work would be the profession's bread and butter for the next few decades.

Accountants also garnered rents by limiting entry into their profession, much as the lawyers had done. Initially, accountancy had open entry and was viewed as a second-tier occupation compared to the monopolized professions. Accountants lobbied the government for entry barriers, and they were successful with rules that created qualifying exams and other controls after 1880.

Additional rents were delivered to the industry with the expansion of income and death taxes. England introduced its first regular income tax in the 1840s, but it was low and simple enough that taxpayers did not need expert advice for compliance and avoidance.[2] But financing the Boer War, and adoption of redistributionist policies at the turn of the century, resulted in higher and more complex taxes and the rapid growth in tax accountancy.

Clearly, the industry benefited substantially from government action. But there was also a large element of spontaneous

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order in the industry's growth, particularly in auditing. The size of business enterprises increased immensely in the 1800s with the coming of the railroads and other large-scale industries. These industries needed more sophisticated double-entry bookkeeping techniques to properly account for expensive long-lived assets. Depreciation accounting was needed to measure net income over the life of investments such as railroad tracks. Independent accountants became the innovating specialists who showed companies how to use new-fangled bookkeeping techniques. In addition, the large scale of the new joint-stock companies required huge sums of money from a broad base of investors. Investors needed someone to vouch for the accuracy of the accounts of companies they invested in. They depended on firms such as Price Waterhouse, founded in 1849, to detect fraud and provide trustworthy information.

British laws in 1856 and 1862 liberalized the rules for joint-stock companies and allowed them to operate with limited liability. Limited liability had been outlawed back in 1720 in the wake of the South Sea bubble scandal. The new rules spurred a rapid increase in the number of companies established in Britain and created a framework for continued economic growth because the scale of industry was getting too large for the old partnership rules to handle. Accountants were in high demand to run the numbers on all the new companies.

Indeed, fraud was a serious problem in company promotion in the early years after the new rules were put in place. As a consequence, companies that wanted to project an image of probity were eager to hire the new accounting firms to examine their books. As one history of PW notes, "scant accounting regulations sent investors in search of professional advice. They began to hire practicing accountants to assist them in their investigations and to put pressure on directors to behave responsibly."[3]

Commitment to Integrity

PW's history reveals that a strong commitment to honesty and integrity helped spur the industry's growth. That was also my impression in four years working at PW in the 1990s. It was generally understood that it would be foolish to risk the firm's hard-won reputation for the sake of a single client. Arthur Andersen's recent behavior seems to have been a mutation into unethical decision-making that the industry should evolve away from. Indeed that is happening. As Andersen has crashed, the good employees have gone to work for the remaining Big Four, which, one hopes, have better control systems in place.

While investor demand for accurate and unbiased information spurred the initial growth in auditing, the government eventually got involved as well. An 1844 law had mandated that firms receive independent financial audits. That mandate was repealed in 1856, but then re-imposed in 1900. Nonetheless, there was a generally laissez-faire auditing environment in Britain until 1948.[4] Financial accounting was thought to be within the sphere of private contract between shareholders and companies.[5] Firms voluntarily signaled their soundness through reports by independent auditors and by assigning respected leaders or titled persons to their boards. From 1857, shareholders also had the protection of accounting fraud's being established as a criminal offense.[6] Also, stock exchanges usually required listed companies to disclose substantial amounts of information. In the United States, a generally laissez-faire approach to financial reporting lasted until the Securities Exchange Act of 1934.

In both countries there were demands for more government rules whenever a speculative bubble burst. But bubbles occurred both before and after heavy financial accounting regulation was in place. We have just seen the high-tech bubble of the 1990s burst despite more than 60 years of regulation in this country. Speculative manias seem to have more to do with new technologies, and less to do with insufficient accounting regulation. Railroad- and telegraph-investment mania hit in the mid-1800s, and the market boom of the 1920s was fueled by surging

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innovation in automobiles, radios, and electricity.[7] Since it is natural for investors to get excited about new technologies, huge stock run-ups might be just the way that markets work. There should be consequences for firms that issue false figures, but broad market declines do not call for greater top-down accounting regulation.

Instead, perhaps we need more bottom-up innovation in financial accounting. In this country decades of regulation have locked in one-size-fits-all "generally accepted accounting principles" (GAAP). But GAAP rules may not be right for every industry. Many high-tech firms today issue additional "pro forma" statements because they think that GAAP figures distort their true financial picture.[8]

It is time to deregulate accounting and to promote diversity in standards. Different stock exchanges could develop different listing categories with alternate accounting standards. The accounting industry started out 150 years ago by competing through reputation and innovation. If we loosen the regulatory shackles, accountants would be freed up to discover better ways to inform investors about the worth of tomorrow's leading-edge companies. □

1. Edgar Jones, *True and Fair: A History of Price Waterhouse* (London: Hamish Hamilton, 1995), and David Grayson Allen and Kathleen McDermott, *Accounting For Success* (Boston: Harvard Business School Press, 1993). Price Waterhouse is now PricewaterhouseCoopers.
2. Jones, p. 99.
3. Ibid., p. 49.
4. Ibid.
5. Robert G. Day, "UK Accounting Regulation: An Historical Perspective," School of Finance & Law Working Paper no. 20, Bournemouth University, 2000.
6. Ibid.
7. Chris Edwards, "Entrepreneurs Creating the New Economy," Joint Economic Committee, U.S. Congress, November 2000.
8. T.J. Rodgers, "Corporate Accounting: Congress and FASB Ignore Business Realities," Cato Institute Policy Brief no. 77, October 25, 2002.

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IDEAS ON LIBERTY
FEBRUARY 2003

They Take More than Half

by Daniel B. Klein and Allan Raish

If a college teacher living in California who earns $75,000 per year publishes an article in *Ideas on Liberty*, and FEE pays him $100, how much do the federal and state governments take? How much does he get to keep?

Here is the pertinent information about the direct takings of such earnings:

2002 Federal Tax Brackets and Rates*			
Single Person Income and Rates		Married Couple Income and Rates	
Up to $6,000	10%	Up to $12,000	10%
to $27,950	15%	to $46,700	15%
to $67,700	27%	to $112,850	27%
to $141,250	30%	to $171,950	30%
to $307,050	35%	to $307,050	35%
above that	38.6%	above that	38.6%

Federal "Payroll" Taxes—Social Security & Medicare

If you have an employer you pay 7.65 percent and your employer pays 7.65 percent of the first $84,900 of earnings. (And your wages reflect that burden.) Each pays 1.45 percent of everything over $84,900.

If you are self-employed, you pay 15.3 percent of the first $84,900 of earnings and 2.9 percent of everything over $84,900.

2001 California Tax Brackets and Rates*,**			
Single Person Income and Rates		Married Couple Income and Rates	
Up to $5,700	1%	Up to $11,500	1%
to $13,600	2%	To $27,300	2%
to $21,500	4%	to $43,000	4%
to $29,900	6%	to $59,700	6%
to $37,700	8%	to $75,500	8%
above that	9.3%	above that	9.3%

(2002 brackets and rates were not available at time of publication.)

The Tax Bite at the Margin

The payment from FEE would be counted as "self-employed" earnings, so the college teacher would have to pay 15.3 percent in levies supposedly for Social Security and Medicare. After deductions and exemptions, his taxable income is in the range of $55,000.

If he's married, here's what happens to the $100 payment: Governments take $48.30 and he keeps $51.70.

If he is single, governments take $51.60, and he keeps $48.40.

Furthermore, out of the retained portion he pays sales taxes (about 9 percent in Santa Clara County, California), property taxes (on the condominium he owns), and excise taxes (on the alcohol, gasoline, and tele-

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*Rates are incremental and apply to taxable income (income after deductions and exemptions).

**California taxes may be deductible on next year's federal tax calculation.

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phone services he buys, for example).

Of the additional $100 he receives from FEE, all told, governments will take over 55 percent.

" . . . The land of the *free*, and the home . . . of the . . . *brave*."

Though FEE usually pays its authors, we instructed it not to pay us for this article. We care for FEE not as much as we care for ourselves, but a lot more than we care for the federal and California governments. Better that FEE have the money than the governments, even if it means fewer dollars for us. □

Mises on Taxation

This metamorphosis of taxes into weapons of destruction is the mark of present-day public finance. We do not deal with the quite arbitrary value judgments concerning the problems of whether heavy taxation is a curse or a benefit and whether the expenditures financed by the tax yield are or are not wise and beneficial. What matters is that the heavier taxation becomes, the less compatible it is with the preservation of the market economy. There is no need to raise the question of whether or not it is true that "no country was ever yet ruined by large expenditures of money by the public and for the public." It cannot be denied that the market economy can be ruined by large public expenditures and that it is the intention of many people to ruin it in this way.

Businessmen complain about the oppressiveness of heavy taxes. Statesmen are alarmed about the danger of "eating the seedcorn." Yet, the true crux of the taxation issue is to be seen in the paradox that the more taxes increase, the more they undermine the market economy and concomitantly the system of taxation itself. Thus the fact becomes manifest that ultimately the preservation of private property and confiscatory measures are incompatible.

—LUDWIG VON MISES, *Human Action*, "Interference by Taxation"

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IDEAS ON LIBERTY
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Opportunity Knocks—Late

by Larry Schweikart

Perhaps it is the emphasis on youth in marketing and advertising—aside from a few prescription-drug commercials these days—that creates the impression that the rich are all young or have their career paths set by age 30. In fact, however, America's business landscape blooms with people who didn't hit their stride until they reached 50. Opportunity sometimes knocks later rather than sooner, but as the following examples show, what is important is whether or not you are ready to open the door.

John K. Hanson (born 1913), who was a furniture dealer after World War II in Forest City, Iowa, came up with the concept often associated with older people, the Winnebago motor home. He once accepted livestock in payment for couches and tables, even drawing the attention of *Time* magazine in 1947. Concerned his little town might be shriveling with the decline of family farming, Hanson pondered ways to save the town. Rather than run to the government for aid, Hanson noticed (ironically, also in *Time*) an article about the camping and trailer boom in California. After researching the project in person, he convinced more than 200 local townspeople to invest $50,000 in a corporation to manufacture travel trailers for a California company.

That venture failed, however, not long after the first trailer came off the assembly line. Hanson, convinced that the outdoors movement was a trend, bought out some investors and encouraged others to stay in and give the project another try. At Winnebago Industries he copied Alfred Sloan's model at General Motors: have plenty of variety in cost, luxury, and accessories. After ten years the company had 20 models of campers and mobile homes, all making use of Hanson's innovative foam-rubber cushions and mattresses that made the units more comfortable and thus more profitable. He also introduced the "unbalanced panel," in which plywood and aluminum sandwiched a layer of Styrofoam insulation, which proved lighter and cheaper than existing "balanced" panels.

By 1965 Winnebago reached $2.8 million in sales, offered stock to the public, and soon became the first exclusively recreational vehicle firm listed on the New York Stock Exchange. After retiring, Hanson watched Winnebago stock slide from over $80 to a low of $1.75 in 1979. Coming out of retirement at age 65, Hanson brought the company back to profitability, although it was difficult. He had to fire more than 3,200 employees: "I came in like Wyatt Earp. I just lined 'em up and shot 'em down."[1] But he saved the company, and for the second time, saved the town. Reflecting back on whether he could have started Winnebago at an earlier age, he concluded there was no way. He did not have the experience or knowledge.

A more colorful and bombastic figure,

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COURTESY LOAN COLLECTION OF ELIZABETH STERLING SEELEY, BARNUM MUSEUM

P. T. Barnum (1810–1891)

Phineas Taylor "P.T." Barnum experienced success even later in life. Barnum (born 1810) was a natural salesman, who loved a practical joke. A prankster as a child, he once pushed a scam too far when he had a friend spread the word around town that he was an escaped killer. A mob nearly lynched him. But this, and other experiences, convinced Barnum of the incredible power of hype—that publicity could sell anything. In 1835, he managed the American Museum, where he displayed a woman he claimed was 165 years old, and when public interest declined, he wrote articles to the local papers under pseudonyms accusing him—Barnum—of fraud regarding the exhibit, and attendance again soared. Although he never admitted it, one of his main attractions at the museum was the "Feejee Mermaid," a creature that Barnum had apparently sewn together from a monkey's head and a large fish's tail.

No matter what the exhibit, though, Barnum learned that if you promoted it with "the largest" or "greatest," or "most spectacular," people would come to see it. But he also knew which acts sold, bringing the famous Jenny Lind, the "Swedish Nightingale," to America for a tour. Typically, Barnum's promotional skills produced a crowd of 30,000 to greet her.

Barnum went bankrupt in 1855 after getting involved with a clock-making company in which he was himself swindled. Embarrassed at being out-hustled, he rebuilt his fortune around exhibits of wild animals and birds. Collaborating with a circus group, Barnum conceived of the notion of moving the animals from town to town by railroad, although he still was not showing a profit. In 1880, however, he encountered the London Circus, run by James Bailey. They merged, with Barnum handling the promotion. Thus it was not until P.T. Barnum was 70 that the famous Barnum and Bailey Circus became a solid business.[2]

Fast Food at Fifty

Someone almost as well-known as Barnum, McDonald's founder Ray Kroc, likewise did not come into his own until middle age. Kroc was a 52 year-old Dixie Cup salesman when he learned of a new product called the Multimixer, which mixed several milkshakes at once. When Kroc quit his paper-cup job to sell Multimixers, he became acquainted with Mac and Dick McDonald in San Bernadino, California. He observed their fast-food operation firsthand in 1954 and was amazed at the assembly-line production. All the operation needed, he thought, was his Multimixers. Working out a deal with the brothers for the name, Kroc opened his first location in Des Plaines, Illinois, and after more than a year, he had enough money to open other locations. Within five years Kroc, well past the mid-century mark, had 200 restaurants. Within another seven years the company would open 100 new stores per year.[3]

Less well known, but nearly as successful, were two other middle-aged masters of sales, Lowell Paxson (born 1934) and Roy Speer (born 1932), co-founders of the Home Shopping Network in 1982. Paxson had owned an AM radio station in Clearwater, Florida, but found FM radio stealing his listeners. He had difficulty selling ad time, so he experi-

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mented with selling products directly. Acquiring overstocked products from local merchants, he premiered a show called "Suncoast Bargainers." After cable television penetrated the market, he decided to make the move to TV, where people could see the goods.

Paxson found his business and management skills wanting in some areas, so he looked for a partner. He found Roy Speer, a man nearly his own age. The two opened Vision Cable System in Clearwater to carry the Home Shopping Channel. Initially only 200,000 cable subscribers saw the show. Still, the duo had nearly $900,000 in sales after a year. They looked for an opportunity to go national, and in 1985, the Home Shopping Network began broadcasting 24 hours a day, earning $6 million in six months. Demand was so great that a year later, they started HSN2, a second network featuring more upscale, name-brand merchandise such as Gucci and Yamaha. Although the "rocket ride" that the two men experienced slowed in the late 1980s, when Sears and J. C. Penney started direct sales on cable, the success of Paxson and Speer seemed to confirm the adage that life begins at 50.[4]

Tonic and Soft Water

Probably few entrepreneurs had as hard a road to hoe as Lydia Pinkham, a housewife whose husband, Isaac, was in a wheelchair and who had five children to feed. The Panic of 1873 had pushed the Pinkhams into abject poverty, and out of desperation Lydia began selling a vegetable compound for "female complaints"—a term that covered a number of discomforts related to women's anatomy. Manufacturing the tonic in her basement, she sent her two sons to sell and distribute the product, using their wages to purchase supplies. Husband Isaac wrote copy and stuffed envelopes. The family's break came when an ad placed in the *Boston Herald* brought in large orders. By that time, Lydia was 60 and had her own image placed on the bottles. A new ad campaign, using streetcar signs, magazines, and bottles, made Lydia Pinkham a household name. Her share

COURTESY THE LYDIA E. PINKHAM MEDICINE COMPANY

Lydia Pinkham (1819–1883)

of misery did not end, though, as both sons died of tuberculosis, at which time Pinkham, then nearing 70, sold the business.[5]

Emmett Culligan was certainly younger than Lydia Pinkham when he invented his water-softener equipment in the early 1920s, but he did not make a go of his business until he was close to 50. In business terms, though, he had already lived two lifetimes. Culligan had been worth $200,000 at age 28 when the value of his lands plummeted and forced him to move home with his mother. Meanwhile, he had experimented with a filter that removed hard minerals from water using a natural greensand called zeolite. Borrowing a bag of the sand, he experimented until he perfected the device. Opening a new firm in St. Paul in 1924, Culligan immediately got into patent squabbles and found himself broke again. After resolving the dispute, he continued to believe in the water filter and concluded that he merely had to find a way to bring the price down to see heavy sales.

Culligan also understood that no matter how good the product was, it would not just "sell itself." Creating the right type of sales force was key. Ready to try again in the middle of the Great Depression, Culligan opened

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a new company in Northbrook, Illinois. Using new machinery, he got the price down, but the sales gimmick that proved successful was a guarantee that the customer could cancel service anytime. Continuing to sell during World War II, by V-E day, Culligan had nearly half a million subscribers. Previously he had hired salesmen to copy the tactics of vacuum-cleaner salesmen or the famous "Fuller Brush Man." But by the 1950s times had changed, and Culligan altered his approach. An ad company in 1959 came up with the famous line, "Hey, Culligan Man," which characterized all the company's promotions. By the early 1960s, sales had doubled, and Emmett Culligan, having made his fortune after he was 50, retired before he lost another.[6]

Mary Kay

Opportunity is no respecter of persons or circumstances. Consider Mary Kay Ash (born 1915), whose life resembled a movie, something like *The First Wives' Club*. Supporting her husband by selling cleaning supplies and conducting in-home demonstrations, Ash attained a top position and a good salary in a direct-sales organization. She was repeatedly passed over for promotions, however, even after outperforming male counterparts. Then, having gotten her husband's company off the ground, she found herself served with divorce papers. Already in her late 40s with a family to support, she took more sales positions, until she encountered a woman who had developed her own skin products. Purchasing these, Ash started her own company in 1963 under the name Beauty by Mary Kay. She conceived the sales tactic in which a woman would host an in-home beauty show, or party, for her friends in return for certain rewards. Most of Ash's sales force were women—many in the same position as she had been—and she emphasized incentives as a means to boost sales. Although she gave out bonuses, vacations, and other prizes, the most famous of her incentives was a car. At first she gave away pink Buick Regals, but eventually upgraded the prize to the famous Mary Kay pink Cadillac.

By the late 1980s Mary Kay had 120,000 employees and had established itself as one of the leading cosmetics/beauty companies in the world. When she died in 2001, Mary Kay had created an empire, all of it after age 50.[7]

If the stories of these eight individuals tell us anything, it is that opportunity knocks, although sometimes later rather than sooner. The key is to be ready to open the door. More important, though, most of these successful entrepreneurs failed and struggled, some of them for decades, before finally landing on the product or service that made them famous. Resilience, determination, and a refusal to view age, poor health, marital status, or any other circumstance as an impediment moved these men and women to the forefront of their businesses. □

1. Quoted in Joseph J. Fucini and Suzy Fucini, *Experience, Inc.* (New York: Free Press, 1987), p. 64.
2. Phineas T. Barnum, *Struggles and Triumphs, or, Forty Years' Recollections of P.T. Barnum* (Buffalo, N.Y.: Courier Company, 1878), and Irving Wallace, *The Fabulous Showman: The Life and Times of P. T. Barnum* (New York: Knopf, 1939).
3. Ray Kroc and Robert Anderson, *Grinding It Out: The Making of McDonald's* (Chicago: Contemporary Books, 1977).
4. See Fucini and Fucini, pp. 89–95.
5. Robert Sobel and David B. Sicilia, *The Entrepreneurs: An American Adventure* (Boston: Houghton Mifflin, 1986), pp. 193–96.
6. Emmett Culligan, "Softeners Rented," *Business Week*, December 28, 1946, p. 21, and Joseph J. Fucini and Suzy Fucini, *Entrepreneurs: The Men and Women Behind Famous Brand Names and How They Made It* (Boston: G. K. Hall, 1985), pp. 99–101.
7. See P. Rosenfield, "The Beautiful Make-Up of Mary Kay," *Saturday Evening Post*, October 1981, pp. 58–63, and Larry Schweikart, *Entrepreneurial Adventure: A History of Business in the United States* (Ft. Worth, Tex.: Harcourt, 2000), pp. 504–505.

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CAPITAL LETTERS

Meat-Eating, Health, and the Poor

To the Editor:

Dennis Avery asks, "Are meat eaters starving the poor?" (October 2002). While it may be a stretch to claim a causal relationship between the inefficiency of raising animals for food and global starvation, that does not negate the many other advantages of vegetarianism. To comment on some of his assertions:

"There has never been a voluntarily vegetarian society in all history." I assume that he believes that no society would voluntarily exclude a food source. When there are alternatives, however, many groups of thoughtful people do and have done so, throughout history. This includes groups such as Essenes, Buddhists, Hindus, Seventh-Day Adventists, Jains, as well as many others who, whether for religious or moral reasons, think before they eat. . . .

"Our Stone Age ancestors stole wild birds' eggs, gathered clams, and hunted any creature they could club, trap, or spear—to get the vital amino acids and micronutrients that humans need and can't get from plants." There is no nutrient in animal flesh or product that one cannot get from plants. . . .

Mr. Avery contrasts the diet of hunters and gatherers with those who settled down and developed stationary agriculture. He quotes an expert in Stone Age diets as saying *"The agriculturalists have bad teeth, bone lesions, small and underdeveloped skeletons and small craniums, compared to the hunter-gatherers."* One can say that these "agriculturalists" obviously were lacking something in their diets, but one cannot say that what they were lacking was animal flesh. . . .

He claims that "Modern crop yields are not only the highest in history, but also the most sustainable." This is completely false. The studies I've read show that organic farming, which is sustainable, has comparable yields. In addition, commercial farming mines the soil of minerals and cannot continue for very much longer because the only thing put back is nitrogen, potassium, and phosphorus. . . .

—NICHOLAS KYRIAZI
nkyriazi@telerama.com
Pittsburgh, Pa.

To the Editor:

Dennis Avery makes the excellent point that vegetarianism will not solve the world's food problems. He is mistaken, however, that massive crop yields due to superphosphate fertilizers and pesticides are the answer.

According to the U.S. Environmental Protection Agency (EPA), pesticides, mainly used on farms, are the worst environmental problem in the nation. They contaminate water supplies, pollute the air, and sicken animals and humans that happen to eat or drink the residues.

According to the EPA, up to 85 percent of human cancers are caused by toxic chemical exposure, much of which comes from farming. The cost of these cancers and many other toxin-related conditions must be considered in evaluating the wisdom of toxic agriculture. They contribute significantly to the spiraling health-care costs in our nation and others. Granted, figuring these costs is not easy. Unless it is done, however, the benefits of toxic agriculture are greatly overstated, as in this article.

In my medical experience of over 20 years, the answer to food shortages—and to many illnesses—is what is called the organic agriculture movement. It uses some of the new hybrid crop technology and all the mechanization and other modern methods, but not toxic chemicals. This is the fastest growing segment of the agricultural industry, increasing about 20 percent per year as thousands more Americans choose to pay more for clean food.

Organic agriculture is a better example of a pure free-market phenomenon than agriculture as a whole. It is not driven by government subsidies or special favors. The peo-

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ple want it and farmers respond. It also saves many small farms as it is a niche market in which smaller farmers can make a living.

The author is correct, but does not emphasize, that so much of the food Americans consume has been refined and is nutritionally worthless. The need is not so much to "triple the yields" as it is to grow quality. Fortunately, more people every day realize this and are voting with their pocketbooks for organic agriculture.

—LAWRENCE WILSON, M.D.
Prescott, Arizona

Dennis Avery replies:

Avery says we've never had a voluntarily vegetarian society. What about Hindus and Buddhists? Both Hindus and Buddhists are consuming livestock products in larger and larger quantities as their incomes rise. Asian meat consumption has more than tripled since 1975. India has always consumed prodigious amounts of dairy products, and from the standpoint of "the rich stealing the world's resources," a cow is a cow, whether it produces meat or milk. It eats grass and requires land either way. In surveys, about three-fourths of India's Hindus today say they will eat meat (but not beef from sacred cows) when they can afford it. McDonald's in India is already doing well selling lots of "muttonburgers with special sauce."

There is no nutrient in animal flesh or product that one cannot get from plants. Key amino acids like lysine and tryptophan are often scarce in vegetable foods, along with such important nutrients as iron, zinc, and calcium. Children frequently suffer serious vitamin A deficiency when forced to forgo livestock products. My brother suffered a serious protein deficiency when he attempted to follow a vegetarian diet. Moreover, the human intestine evolved on diets high in livestock products; hunter-gatherers apparently got about two-thirds of their calories from animals. Our intestines are very short to wrest all of our calories from vegetable-only sources, which could mean energy loss.

The studies I've read show that organic farming, which is sustainable, has comparable yields with conventional farming. Most comparison studies show field-by-field yield deficits of 10–40 percent for organic crops. The more important problem, however, is that organic farmers refuse to use "industrial fertilizers," and the world has a huge shortage of organic nitrogen. That's the major reason the Danish government's Bichel Committee reported in 1999 that an organic-only mandate would cut that country's human food production by 47 percent. (Chairman Bichel is the former president of the Danish Society for the Conservation of Nature.) The world's conventional farmers take 90 million tons of natural nitrogen from the air each year through an industrial process. (The air is 78 percent nitrogen.) Nourishing our crops without nitrogen from the air would require the manure from another 7–8 billion cattle. Where would we get another 50 million square miles of land for cattle forage?

According to EPA, up to 85 percent of human cancers are caused by toxic chemical exposure, much of which comes from farming. The EPA agrees with the National Research Council and other authorities that less then 3 percent of our cancers are due to the whole bundle of environmental factors, including industrial emissions, dust, and pesticides. More than a decade ago, Congress hired the world's two top cancer experts (Britain's Sir Richard Doll and Dr. Robert Peto) to assess American cancer risks. They concluded that 98–99 percent of our cancers are caused by (1) smoking; (2) our own genetics; and (3) bad diet choices (too few fruits and vegetables and too many fats). Dr. Robert Scheuplein, long the senior cancer expert in the FDA's Food Safety Center, said publicly that he doubts pesticide residues have ever caused a human cancer death.

Organic agriculture is not driven by government subsidies or special favors; it is a pure free-market phenomenon. Yes, but it created its own demand by lying about the health risks of conventional food and the environmental benefits of organic. The British Advertising Standards Authority recently barred its organic industry from making any claims about superior health or

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nutrition since it offers *no* evidence to support such claims. As for environmental benefits, high-yield conventional farming takes far less land from nature, suffers much less soil erosion per ton of food than organic farms, and protects more than 12 million square miles of wild lands from being plowed for low-yield crops. Integrated pest management also minimizes pesticide use. The Soil and Water Conservation Society of the United States wrote in 1995 that such modern high-yield farming is "the most sustainable in history."

Much of the food Americans consume has been refined and is nutritionally worthless. I certainly agree that we'd be better off eating potato skins, rice hulls, and whole-wheat bread. But most consumers choose not to do so. On the other hand, our processed foods contain not only a lot of good nutrition, but processing, in some cases, also enhances nutrition. Processed foods also contain some important additives that "natural" foods don't offer. Before we added vitamin D to our milk, many of our kids suffered from bone-deforming rickets disease. Preservatives prevent a lot of dangerous mold spores, and pasteurized milk prevents transmission of tuberculosis, undulant fever, and a host of nasty organic diseases. Soon we'll be offered irradiated foods, which could not only save thousands of lives per year from food-borne bacteria, but would also taste fresher. □

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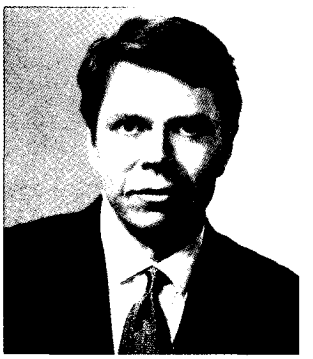
FEBRUARY 2003



Self-Interest, Part 1

Asked on camera by John Stossel "Who has done more good for humanity, Michael Milken or Mother Teresa?" philosopher David Kelley unhesitatingly answered, "Michael Milken."

Kelley is surely correct. But I've spoken to many people who are horrified by this answer. Mother Teresa's name is synonymous with good deeds and humanitarian concern. In contrast, Michael Milken was a businessman, a financier. To comfort others, Mother Teresa sacrificed herself. Michael Milken did what he did only to make money for himself.

Self-interested motives are so frowned on—and other-regarding motives so admired—that the typical pundit, politician, and pedestrian believes that motives are *all* that matter. Mother Teresa is admired because of her motives, not because of her results. Michael Milken and other business people are famous—or, in many circles, infamous—largely because of the personal fortunes they've accumulated rather than because of the huge benefits their goods and services bestow on millions of people around the world.

One response to those who judge a person exclusively by his motives was made famous by Adam Smith. It says: Look, almost everyone is naturally self-interested. Whether or not this fact is regrettable, it is unalterably true. So let's deal with reality. As it happens, a free market encourages self-interested people to act in ways that benefit others. So we need not spend much time lamenting people's self-interest.

Being a great admirer of Adam Smith, I find this line of argument compelling. But having now taught for 20 years, I've learned that it leaves a sour taste in the mouths of many students. "But wouldn't it be great if we all were like Mother Teresa?" students earnestly ask.

No, it would not be great. It would be catastrophically bad.

Self-interest is not merely an unchanging fact of reality that, as regrettable as it might be in the abstract, turns out to be okay in a free-market society. Instead, self-interest is *necessary* to make a large economy work. If each of us cared as much for strangers as we care for ourselves and our loved ones, our lives would certainly be poor and short, and possibly also solitary, nasty, and brutish.

At least two reasons justify my claim that self-interest is a benefit to humankind—that our world would be worse, not better, if self-interest were not part of our mental make-up. This month I'll address the first reason. I'll address the second reason next month.

While it's difficult to imagine the supposed ideal of universal love—a world in which no one distinguishes the welfare of strangers from that of himself and his loved ones—try to conjure in your mind this imaginary scenario.

One thing to notice is that, with everyone caring deeply about everyone else, our world would be a tyranny of busybodies. I often scold myself for caving into my weak-

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nesses—for sleeping too late, for spending too little time with my young son, for eating too many potato chips, for buying that new necktie that I don't really need, and so on. I then try to govern myself by leveling self-imposed penalties for these failures. In other words, because I care deeply about myself, I "interfere" in my own life in order to improve my life's prospects.

Caring for Strangers

If I cared equally as much about some stranger in Santa Fe or Santiago, would I resist interfering in his life to govern his choices in ways that, to me, seem best? "Sir, you shouldn't watch so much TV; your time would be better spent reading Tolstoy" or "Mr. Jones, you should put that extra $100 into your savings rather than spend it on tickets for a football game." Remember, we're imagining that I care as much about this stranger as I care about myself; he means the world to me. I truly yearn for him to have a happy and good life; I desire this outcome every bit as much as I desire to have such a life for myself and every bit as much as I desire that my son enjoy such a life. It would pain me terribly to see this beloved stranger make choices that seem to me to be unwise for him.

The problem is, while I might care as much about this stranger as I care about myself, I do not know this stranger as well as I know myself. I don't know his abilities, his history, his likes, his dislikes, his fears, his pleasures, his circumstances. After all, he's a stranger. Because he knows his situation better than anyone else, he is best positioned to make decisions for himself. My trying to do so, even if I care passionately about his well-being, would substitute the judgment and discretion of an ignorant party (me) for that of an informed party (him).

One happy consequence of self-interest is that it aligns concern with knowledge. Each of us knows most about himself, and each of us is concerned mostly about himself. That person to whom each of us directs the bulk of his life's energy and interest is that person whom each of us knows most about. In short, it's good that I care mostly about myself because I'm the person who knows most about myself. Likewise, it's good that I don't care as much about you as you care about you because I don't know as much about you as you know about you. And you surely don't want me to disturb you with my well-meaning but ill-informed attempts to govern your life. That would be harassment, not helpfulness.

Self-interest doesn't strip people of their concern for others, but it does confine that concern to appropriate realms. I care not only about myself; I care also, very deeply, about my family. This concern is appropriate because I know a great deal about my son, my wife, my parents, and my siblings. I care also about my friends, although not with the same intensity that I care about my family. I know my friends pretty well—much better than I know strangers, but not as well as I know my family.

Self-interest not only prompts each of us to care for himself and his loved ones, but also—and importantly—it helps to keep each of us from attempting to meddle in the affairs of those whom we know too little. □

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BOOKS

The Invisible Heart: An Economic Romance

by Russell Roberts

MIT Press • 2001 • 282 pages •
$22.95 hardcover; $14.95 paperback

Reviewed by E. Frank Stephenson

A few semesters ago I created a freshman honors seminar in economics. While I was pleased with the course overall, like most first-time courses there was room for improvement. During the last class meeting, I asked students to discuss what worked well and what did not. One comment was most memorable. A young woman who had done very well in the course and who had been an active participant in the class discussions said that she left the course convinced that market economies lead to the highest overall standard of living, but remained unconvinced about the fairness of market systems.

With the student's comment still fresh on my mind, I was pleased to see Russell Roberts's new book, *The Invisible Heart.* For in this lively novel, Roberts offers up a debate about the morality of capitalism via the romantic sparring of protagonist, Sam Gordon, and his love interest, Laura Silver. Sam is a free-market economics teacher at Washington's elite Edwards School. In contrast, Laura, who teaches English, takes a more favorable view of government regulation than of markets. Roberts uses Sam and Laura's repartee to debunk common caricatures of free-market economics and economists.

Among the shibboleths slain are that economists are concerned only with money, that markets favor firms over consumers, and that market advocates are heartless individuals with no compassion for others. From a pedagogical perspective, Sam and Laura prove to be a successful vehicle for debating the virtues of markets and government regulation. Though it will come as no surprise to readers of his columns in this magazine that Roberts is more sympathetic to Sam's pro-market viewpoint, Laura is no shrinking violet. She suggests, for example, that "capitalism created the poverty we're trying to fix" and she proclaims that the failure of private charity is "why the government had to get involved during the Great Depression."

Although Roberts's primary purpose is illuminating the invisible heart of capitalism, he presents, as Milton Friedman blurbs, "an impressive amount of good economics." Included are excellent discussions of cartels, "underpayment" of teachers, and the importance of property rights. Perhaps most memorable is Sam's analogy of so-called exhaustible resources such as oil to a room full of pistachio nuts in which people stop looking for nuts before all nuts are found because it gets too time-consuming to locate nuts among discarded shells. Of course, many readers of this magazine will recognize the similarity between Sam's discussion of how "a thousand unseen people" help prepare Laura's bagels and Leonard Read's essay "I, Pencil."

As for the obligatory quibbles, I have two minor ones. First, *The Invisible Heart* is billed as an "economic romance." I think that is only half-right since it reads more like a mystery. Will Sam, the free-market economist, successfully woo Laura, the English teacher, with warm views of government regulation? Why is Sam's teaching job in jeopardy and will he use some incriminating documents to blackmail his persecutor into allowing him to keep a job that he likes? What about the subplot involving a dishonest CEO and the Orwellian Office of Corporate Responsibility? I'll obey the rules of reviewing etiquette and leave the answers to these questions for the reader.

My second quibble concerns Friedman's blurb. I have nothing against impressive amounts of good economics, something this society is definitely lacking. My quibble however arises from a pedagogical perspective. Since the topics included are wide-ranging but necessarily selective, *The Invisible Heart* is somewhat difficult to integrate

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into a course. This is a challenge shared by other pedagogical novels, but one that is easily outweighed by the rewarding payoff from Roberts's superb book.

If you are a reader seeking an enjoyable dose of market-friendly economics or an instructor looking for a way to enliven your classes and break away from turgid textbooks, you must have *The Invisible Heart.* □

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The Technology of Property Rights

edited by Terry L. Anderson and Peter J. Hill

Rowman & Littlefield • 2001 • 224 pages • $27.95

Reviewed by George C. Leef

Americans are used to thinking of property rights as a given, but as Terry Anderson and P. J. Hill point out in this splendid collection of essays (one of the many books to have come from the Political Economy Research Center—PERC), "the production of property rights is an economic activity determined by the expected returns to defining and enforcing property rights." That insight is important in demonstrating how deep the spontaneous order of the marketplace is: property rights are not merely decreed by political authority, but themselves emerge as a part of the competitive process.

Anderson and Hill have here assembled eight scholarly contributions that explore the connections among technology, institutions, and the establishment of property rights. Much of PERC's work has centered on showing how improved definition and enforcement of property rights would alleviate pollution and resource-conservation problems. With the current volume the contributors show that we need technological freedom to maximize the benefits we can derive from property rights.

To illustrate their basic point that property rights depend on technology, Anderson and Hill discuss the problem of establishing rights in the grazing lands of the American West. Cattle roamed freely on open range before it became feasible to fence large areas. The inefficiency of such arrangements stimulated innovation in fencing materials. The editors note that in the years 1866–1868, 368 patents were issued for fencing products. Barbed wire emerged as the best solution to the problem and mass production thereof made possible large cattle ranches with an owner's cattle kept in and predators kept out.

The book's lead-off essay is Bruce Yandle's "Legal Foundations for Evolving Property Rights Technologies." Yandle gives several intriguing case studies on the evolution of property rights under different institutional environments. In one case, for example, he shows that scientific improvements reduced the costs of defining property rights in water. "Improvements in the science of hydrology," he writes, "made it possible for common law judges to identify polluters who poached on the property rights of downstream owners and led to major modification in common law rules involving groundwater pollution." Yandle's essay ought to be read by all those officials who are prone to think that government regulation is the best or only means of controlling pollution.

Water is also the subject of Clay Landry's essay, "The Role of Geographic Information Systems in Water Rights Management." Landry shows how technology has changed since the early days of western mining and agriculture to permit precise definition—and thereby enforcement—of water rights. State regulators and private parties are making use of aerial photography, satellite imagery, and other technologies to detect and stop illegal water use. Landry predicts that those technologies will soon facilitate a much-improved market for water making use of the Internet, but cautions that such markets "will have to overcome regulatory obstacles that could offset any speed and efficiency gains offered by

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electronic transfers." Here we have the old story of sluggish bureaucracy getting in the way of modernization.

Barrett Walker focuses on storm runoff and pollution. He shows how the same geographic information technologies discussed by Landry make it possible "to more precisely identify the source and impact of storm runoff on watersheds and to charge polluters for their impacts." His optimistic conclusion is that technological improvements "now make a property rights approach to environmental protection affordable for communities throughout the United States."

Daniel Huppert and Gunnar Knapp examine the problem of overfishing. "Fishermen can gain from rational conservation of fish stocks, but without individual property rights to the fish or collective fishing rules, each has little or no individual economic incentive to sacrifice current catch for long-term future harvests," they write. Can technology and property rights help overcome the well-known "tragedy of the commons"? The authors answer yes.

Anna Michalak's "Feasible Contaminant Source Identification for Property Rights Enforcement" provides several case studies on the use of technology for identifying sources of pollution, making it easier to apply common-law remedies for pollution torts.

There is not enough space here to mention all the essays in the book, but all are worthwhile for anyone interested in the interface between technology and property rights.

As a final note, I'll add that the book's emphasis on the benefits of technology drives a stake through the heart of the misty-eyed Luddism that pervades much of the environmental movement. If you want a cleaner environment, you should be in favor of wide-open technological freedom rather than the foolish nostrum of ever-increasing government control. □

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The Trouble with Government

by Derek Bok

Harvard University Press • 2001 • 512 pages • $36.00 hardcover; $19.95 paperback

Reviewed by Doug Bandow

Why does the federal government perform so badly, asks Derek Bok, former president of Harvard University? It's a step in the right direction for a political "liberal" even to pose that question. But although Bok notes several factors that inhibit the efficiency of Washington, he seldom addresses the most important failure of government: attempting to do more than it should. "The multiple responsibilities of the federal government give it exceptional opportunities to serve the people and fulfill their aspirations," he writes. Alas, he complains, "At the same time, the government also has exceptional capacities to frustrate and disappoint its citizens."

A cynic might ask "so what?" if people are frustrated with government. They shouldn't be putting their faith in it to fulfill their aspirations. Instead, they should expect it to protect their rights, establishing the minimal framework for a free society. That, however, is far from Bok's mind. He assumes government is the creator, not the protector, of rights and should actively manage "society."

Bok admits that the state often manages badly and worries that "persistent disappointment over the government's performance could deepen and solidify the public's loss of trust and confidence in its officials and in their capacity to help people achieve their goals." Of course, that warrants concern only if the business of government *is* helping people achieve their goals.

Bok thinks it is. Perhaps most shockingly, he argues: "Amid the welter of separate interest groups, religious denominations, advocacy organizations, and associations of all kinds, government is the one authoritative agency that can define, enunciate, and validate a set of common moral standards and obligations for all the people." Distrust

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in government will naturally "weaken the moral authority of the State." To expect that of government, however, is to ensure failure and disappointment, not because of constitutional structure, interest-group pressure, or citizen apathy, but because of the nature of political institutions, where coercion is applied by human beings responding to perverse political incentives.

There is another, more practical problem, Bok argues. When government promises to do something, and doesn't perform, people are hurt. He explains: "a shoddy performance by public officials today can mean inadequate schooling for children, hunger for needy families, sluggish growth or even a recession for the economy, useless training for workers seeking job skills, substandard health care, polluted air, and a host of other misfortunes."

That is quite true, but the analysis should not start with *how* can the government better educate children?, but *should* the government be in the business of educating children? Government failure is not so much a result of its not working as intended, but of its working exactly as intended. Why would one expect a centralized educational monopoly run by political officials accountable primarily to vested professional elites to be the best method of helping children learn?

Bok's basic thesis, "the trouble with government," makes the most sense when it comes to the essential, core roles of government. How does one efficiently and effectively defend the nation? How does one prevent and prosecute crime? Etc. Here, Bok's analysis is generally thoughtful, sometimes provocative. He criticizes politicians and the media, but doesn't strongly indict either group, writing that "the charges against them are not linked convincingly to the failures of the federal government to achieve the goals most Americans affirm."

So Bok goes on to review the specifics of governing, asking why legislation is so badly designed and regulations so inefficient. Much of his analysis is correct, but he undermines it by assuming that government must be responsible and we must keep looking for better ways to legislate and regulate. For instance, he contends that government should be "protecting all Americans against the major hazards of life" and that poor people don't have enough political power to demand that government create the right programs.

Bok dismisses many of the usual panaceas, such as direct democracy, citizen panels, and campaign-finance reform, but offers none himself. Some of his ideas would undoubtedly make Americans worse off, especially expanding the political power of unions.

He closes by calling for civic involvement, but simply convincing more people who want to use government to live at everyone else's expense to vote is no answer to anything. Indeed, that reflects the fundamental flaw in Bok's book. Making government more efficient and responsive would be an important goal if government were limited, doing only what it needs do. But when government is the most imperialistic of institutions, determined to take over not only the functions of most other social institutions, but decision-making by individuals as well, efficiency and responsiveness are not major concerns. Returning government to its proper role is. □

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Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment

by Emma Rothschild

Harvard University Press • 2001 • 368 pages • $50.00 hardcover; $18.95 paperback

Reviewed by James R. Otteson

There is a burgeoning movement afoot to redefine Adam Smith as a "liberal" of the contemporary, progressive sort, rather than as the icon of classical liberalism he is standardly taken to be. It has never been a secret that Smith was no anarchist, nor even, probably, a "minarchist." He argued that the government should undertake principally three tasks: defense against

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foreign invaders (an army); defense against domestic invaders (police and a court system); and public works (those things from which everyone would benefit but from which no private investors would profit enough to provide).

This last task, in particular, is the edge of the proverbial wedge: left-leaning scholars who would like to knock Smith off his pedestal in the classical-liberal pantheon have argued that this criterion licenses—indeed, requires—a great deal more active government action than those who wear Adam Smith ties would care to admit.

Emma Rothschild's *Economic Sentiments: Adam Smith, Condorcet, and the Enlightenment* is the latest salvo in the battle to redefine Smith. Rothschild, director of the Center for History and Economics, King's College, Cambridge, has written an investigation into the economic and political writings of the late eighteenth century. It is full of interesting facts and quotations, and analyzes texts in novel, illuminating ways. Although one cannot adequately address the book's wide-ranging discussions in a short review, two of Rothschild's central themes are of particular interest for people who want to understand Smith aright.

Rothschild's first claim is that Smith intended his famous "invisible hand" remark in *The Wealth of Nations* as nothing more than a "mildly ironic joke." The second is that Smith was not as committed to laissez faire as has been thought.

Consider the first. Rothschild begins by noting that Smith uses the phrase "invisible hand" only once in *The Wealth of Nations*—from which she concludes that it is unlikely he meant it to be the conceptual centerpiece of the book. Moreover, she shows that Smith's contemporary and near-contemporary readers did not center on that idea as the most significant of Smith's work. In fact, it took almost a century before people started claiming that the invisible hand was one of, if not the, most important ideas in his book.

Rothschild's argument is provocative, but unpersuasive. The principal reason it fails is that one could grant each of her claims and they would still not contravene the crucial fact that the *idea* of an invisible hand, if not the phrase itself, pervades Smith's argument. Over and over again, he makes reference to and relies in his argument on the claim that people acting only on their local, often self-interested intentions can unwittingly give rise to a larger system that benefits both themselves and others.

I would argue that the invisible hand is perhaps the central notion in Smith's book. Why else does Smith advocate free trade, the removal of government intervention in the market, protection of private property, and the abolition of state-granted privileges like monopolies? In each case they provide individuals the opportunities to satisfy their fundamental desire to "better their own condition," which, in the doing, makes everyone better off.

The importance of the indivisible-hand notion for Smith's argument also goes some way toward explaining why Rothschild overstates her other claim, namely, that Smith is less inclined toward laissez faire than was previously thought. It is true, as Rothschild reminds us, that Smith recommended state subsidy of public schools (though it should be noted that he argued they must be only partially state-funded, that competition was still necessary, and that they should cover only the elementary years). And it is also true that Smith was quite concerned with the well-being of the average laborer. Like Turgot, Rothschild argues, Smith wanted the government to take action to help the condition of the poor. She writes: "Smith's discussion of scarcity has been of central importance to his posthumous reputation as a relentless proselytizer of free enterprise—as a theorist who promoted commerce, even in times of impending famine. Yet he was thought of during his lifetime as a friend of the poor."

Those two things are not inconsistent! As is increasingly clear to us today, and was already clear to Smith in 1776, free markets are not incompatible with concern for the poor. In fact, as Smith saw, free markets are essential to making the poor better off—that is why he endorsed them.

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Rothschild's book is interesting for its extensive information about thinkers like Condorcet and Turgot, and about the political and intellectual climates in which they and Smith wrote. But in the end her understanding of Smith, as well as of free-market economics, leaves something to be desired.□

James Otteson is the author of Adam Smith's Marketplace of Life *(Cambridge University Press, 2002) and teaches philosophy at the University of Alabama.*

The Opium of the Intellectuals

by Raymond Aron

Transaction • 2001 • 358 pages • $29.95 paperback

Reviewed by Antony Flew

This, the most famous of Aron's works, was first published in 1955. It is now republished together with the essay "Fanaticism, Prudence and Faith," which was Aron's original response to his critics. It thus becomes the fifth volume in Transaction's series of Aron's works. In his introduction to this new edition, Professor Harvey Mansfield writes that "The good sense of non-philosophers needs to be protected against bad philosophy even when it goes over their heads, for there are many, especially among the young, who will be impressed with such high-sounding doctrines as existentialism and phenomenology, especially when combined with the moral content and fueled by the passionate hatred characteristic of Marxism." Mansfield concludes that Aron's critique of the fusion of Marx and Nietzsche, of party doctrine and existential thought of French intellectuals in the decade after World War II "continues to speak to the irresponsibility and incoherence of postmodern thought today."

But would such thinkers listen? If they had ever been willing to take account of such radical criticism, they would surely never have become relativistic postmodernists in the first place. So the value of the present republication is primarily historical. For some of us, it provides reminders of intellectual battles long ago. But every reader can hope to learn much from Aron about the peculiarities of political conflicts in France, about how these are all affected by consequences of the revolution of 1789, and about the peculiar part played in such conflicts by the intellectuals as a self-conscious class.

Perhaps the best way to suggest the nature and richness of a work that defies summary is first to quote its two mottos and then proceed to give the suggestive titles of the three parts.

The first motto is the passage from Marx which begins, "Religion is the sigh of the creature overwhelmed by misfortune," and ends, "It is the opium of the people." The second motto is provided by Simone Weil. It is one that expresses Aron's main thesis. It is that "Marxism is undoubtedly a religion, in the lowest sense of the word. Like every inferior form of religious life, it has been continuously used, to borrow the apt phrase of Marx himself, as an opiate for the people."

The first part of the book is entitled "Political Myths." The second is "The Idolatry of History." And the third is "The Alienation of the Intellectuals." These parts are followed by two separate chapters, one on "The Destiny of the Intellectuals" and the other titled interrogatively "The End of the Ideological Age?"

The third part of the book begins with a chapter titled "The Intellectuals and their Homeland," which concludes with three paragraphs of especial interest to a British reviewer. The first of these begins, "Of all Western countries, Great Britain is probably the one which has treated its intellectuals in the most sensible way." Apparently, that means not treating them so seriously as they are in France. Perhaps so. Aron was certainly right about the elevated position of the intellectuals of his own country. "Whether one likes or dislikes it, welcomes or deplores it, the fact remains that the 'clerks' of Paris still play a role in the world and radiate an influence out of all proportion to the place that France occupies on the

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map," he writes. French intellectuals continued to invoke such superficially alluring ideals as "the classless society" and "the exploitation of man by man" long after history had exposed them as dangerous delusions.

These terms are neither so eloquent nor so clear as liberty, equality, and fraternity, nevertheless they illustrate one of the historic functions of the French intelligentsia: "that of associating itself with humanity's dreams and transforming for better and for worse the prosaic achievements of society into Promethean tasks, glorious defeats, tragic epics."

Aron informs us that the French intelligentsia was torn between "attachment to democratic ideas and a taste for aristocratic values; between love of liberty and a revolt against the power and technical civilization of the United States." But I must confess to a lack of sympathy with these various tensions. No doubt Aron was again right in insisting that owing to those conflicts, the French intelligentsia "represented more than itself," but if one reflects on the effects of an education in Paris on many future rulers in the "Third World," it is difficult not to deplore the influence of the French intelligentsia.

Raymond Aron's analysis of French intellectual culture of the 1940s and 1950s retains its relevance into the 21st century, helping to illuminate the minds of intellectuals so that we can understand their penchant for irrational utopianism. Although the particular controversies have changed somewhat, our modern intellectuals partake of the same opium. □

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Decade of Denial: A Snapshot of America in the 1990s

by Herbert London

Lexington Books • 2002 • 208 pages • $70.00 hardcover; $24.95 paperback

Reviewed by William B. Allen

If you think that life in America has gone from bad to worse in the past decade and if you would find a grim pleasure in reading an elegantly acerbic description of the nation's ills, then *Decade of Denial* is for you. Herbert London's snapshot of America in the 1990s brings into sharp focus the consequences of the wrong turn that the nation took sometime during the 1960s. His witty account of the effects of the baby-boomer generation's "adolescent fantasies of utopia," combined with the pervasive "nihilistic relativism" of the age, depicts all too accurately the truth that we have lost our way.

If, on the other hand, you seek a substantive analysis of the factors that have contributed to our sorry state or for directions on the way out of the abyss, you must await the sequel. London, professor of humanities at New York University, cautions that his purpose is not to offer a history of the 1990s, but rather a set of anecdotal illustrations, drawn largely from his own experience and put forward in an "earnest effort to understand" those experiences. The fact that he has captured so well a portrait of the mass culture of today makes one wish for equally cogent musings on how and why its physiognomy became so shaped.

What are the prominent features in his portrait of America? While touching on nearly all aspects of contemporary culture, London focuses particularly on problems within these arenas: media, sports, education, and morality. He opens with the prediction that we need not worry whether or how the airwaves will be filled once we all have access to 500 television channels, because, he reassures us, "Everyone has an opinion, and every opinion will be expressed—on the air." Our national penchant for voicing our opinions and our lack

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of concern about whether those opinions are knowledgeable, shocking, base, or harmful have baneful effects. Excellence, judgment, and truth have all been sacrificed to the god of egalitarianism. By denying the existence of external standards of any type, we have also denied ourselves the opportunity of the very striving that not only creates excellence but advances humanity itself.

London conveys the calamitous effects of this denial most tellingly in his extended discussions of "lower" education (where educators have replaced academic objectives with "psychobehavioral goals") and "higher" education (where postmodernist educators pronounce that "Bugs Bunny is as valuable as Socrates"). His accounts of multiculturalism, affirmative action, cultural faddishness, the erosion of the curriculum, and many of the other ills of our educational institutions are, overall, on target. He errs, however, in the easy assumption that wide access to college necessarily is the proximate cause of mediocrity.

His chapter titled "Cultural Fall-Deeper" is at once the most and least satisfying part of the book. Here he attempts more analysis and diagnosis than elsewhere. After lancing four wrongheaded notions that stand out among the welter of pernicious notions of the past decade, London nevertheless finds hope in his conviction that there is more "flexibility, fungibility, and adaptability on earth" than we might at first assume. Amidst the cultural and political decay of the 1990s, there is yet a prospect for rebirth and renewal. This welcome and thoughtful reflection both on the causes of our problems and on the potential for solutions would have worked much better were it not immediately followed by a jarring blast of the image of a woman wearing a lacy dress with combat boots, lamenting the manner in which women's fashion "conveys mixed sex cues."

Decade of Denial proved ultimately unsatisfying to this reader as a result of its dizzying meandering from one topic to another. For example, in the short 22 pages of the "Cultural Fall-Deeper" chapter, London takes us on a whirlwind tour of complaints about the O.J. Simpson trial, racial double standards, Hollywood celebrities' propensity for adopting causes, the loss of common sense in our society, the Marxists' search for ways to stay in business after the collapse of the Soviet Union, the impact of soft money on political parties, the lack of moral perspective in most children's books, the lack of a historical perspective in newscasting, and the "health gestapo's" campaigns against tobacco and fast food. I'll stop here, although that means leaving off the last several topics of the chapter.

Decade of Denial will find a large and appreciative audience willing to accept it on the terms on which its author presents it. Nor was this often contrarian reader unmoved. My wish was only that this well-crafted rhetoric were used not merely to compose a picture but also to analyze its composition. □

William Allen is professor of political science at Michigan State University.

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IDEAS ON LIBERTY
FEBRUARY 2003

Labor Law and the West Coast Dock Dispute

The two-month West Coast dock dispute was settled in late November, but not until after President Bush obtained an injunction to halt the shutdown that was underway at all 29 ports from Seattle to San Diego. The injunction imposed the full 80-day "cooling off" period permitted by Sections 206 through 210 of the 1947 Taft-Hartley Act. The settlement, however, came about a month before the injunction would have expired.

This labor dispute pitted the International Longshore and Warehouse Union (ILWU) against the Pacific Maritime Association (PMA). The ILWU represents all 10,500 nonmanagement workers in all 29 ports. Apart from management, there is no such thing as a non-union worker on the docks. Any attempt to hire any union-free workers, even though the law clearly permits the hiring of non-union replacement workers during labor disputes, would be met with threats of violence, if not actual violence by the ILWU. As Jim Spinosa, president of the ILWU, said, "We will fight like hell to keep our jobs." What that means can be inferred from the history of the ILWU starting with "Bloody Thursday" on July 5, 1934, during the infamous dock strike (about which more below).

The PMA is the organization that represents all the employers involved with the docks in labor relations with the ILWU. The PMA was formed by the employers to present a united front against the ILWU in contract negotiations and labor disputes. Since unions are exempt from antitrust laws, the law permits one union to monopolize all the labor in an industry, and it also permits the employers in those industries to act together in dealing with such monopoly unions. Industry-wide collective bargaining before this dispute resulted in average blue-collar workers on the docks making base wages of over $82,000 per year, not counting overtime. The unionized clerks, whose job is to keep track of cargo going in and out of the ports, made over $118,000 per year.

The issue between the PMA and the ILWU in this dispute was not wages and salaries. It was the introduction of labor-saving technologies on the docks, which would allow west-coast ports to begin to catch up with productivity gains and cost reductions that are routine elsewhere. For example, on ILWU docks the use of a single crane usually requires two crane operators, a clerk, and a signalman. In Singapore all those tasks are done by one worker operating a computerized cab.

The PMA didn't seek to go as far as computerized cabs. They merely wanted the union to agree to allow clerks to use barcode scanners and hand-held computers, and allow truck drivers and their cargoes to check in to terminals using fast passes similar to those used on toll bridges and roads. It was estimated that these innovations would eliminate about 600 of the 1,200 clerks' jobs at the 29 ports. The PMA agreed to find

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alternative dock jobs for the displaced clerks at no cut in pay, and to downsize through attrition, not immediate dismissals. Indeed, the actual number of jobs on the docks would almost certainly increase as modernization increased the volume of cargo passing through the ports.

The ILWU would have none of it. It insisted that all the new jobs in the future that might be created by changing technology be designated as union jobs. For example, it may be possible for cranes and other dock machinery to become operated by computerized remote control by people not actually on the docks. Such jobs could be contracted out to union-free firms and individuals. The union insisted on maintaining its monopoly ownership of all dock work now and into the future. In the settlement the ILWU got its way, but acceded to the introduction of some labor-saving technology.

One cannot fault the ILWU for looking out for its own interests and purporting to look out for the interests of its members. It, like all unions, is a private organization trying to do the best it can for itself. So, too, is the PMA. Under a proper rule of law, the government would have no business interfering with the bargaining process between the two, nor would it be just for the government to prevent the ILWU from striking or the PMA from locking out ILWU workers. The two sides would be able to decide for themselves whether they needed any "cooling off" period. The government's sole responsibility would be to keep the peace, preventing each side from using force to pursue its interests.

Rule of Law Failed

But the rule of law lapsed in 1934 at the birth of the ILWU on Bloody Thursday, when the government failed to keep the peace. As a result many people were injured and several were killed as Harry Bridges and his henchmen used violence to prevent any union-free workers from working. No prosecutions of the perpetrators were ever undertaken. Unions are now immune to federal anti-extortion laws. This is the legacy the ILWU would "fight like hell" to preserve.

Through exclusive representation, which requires antitrust immunity to be effective, the Taft-Hartley Act protects union monopolies from competition from other unions and from union-free workers and firms. With Taft-Hartley, Congress created the possibility of union monopolies' provoking national emergencies by shutting down entire industries. Congress then tried to solve the problem it created by adding Sections 206–210 to the Act, which President Bush used to open up the docks.

If unions were treated like all other private organizations in ordinary law of contract and torts, and in criminal law, some jobs on some ports would be unionized and some would not be. No union could shut down the entire west coast. There would be open competition between unions and between unions and union-free workers. The fault, in this dispute was not with private interests' pursuing their goals. The fault was with labor legislation that removed unions from the rule of law. □

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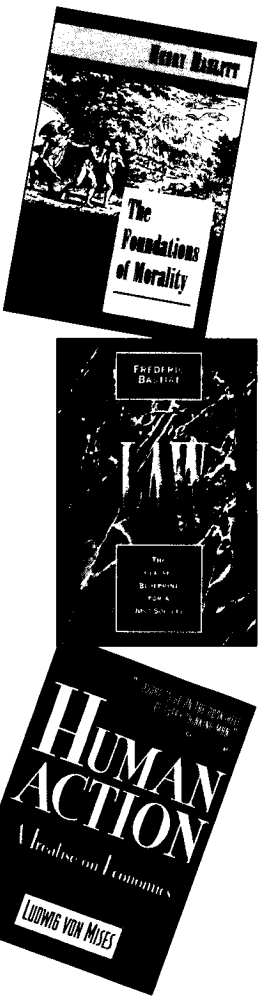

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All the measures of interventionism by the government are directed toward restricting the supremacy of consumers. The government wants to arrogate to itself the power, or at least a part of the power, which, in the free market economy, is in the hands of the consumers.

—Ludwig von Mises (1881-1973),
Economic Policy: Thoughts for Today and Tomorrow

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